

# **SESSION LAWS**

**OF**

## **HAWAII**

**PASSED BY THE**

**TWENTY-FOURTH STATE LEGISLATURE**

**STATE OF HAWAII**

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### **SECOND SPECIAL SESSION**

**2007**

Convened on Wednesday, October 24, 2007 and  
Adjourned sine die on Wednesday, October 31, 2007

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### **REGULAR SESSION**

**2008**

Convened on Wednesday, January 16, 2008 and  
Adjourned sine die on Thursday, May 1, 2008

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### **SPECIAL SESSION**

**2008**

Convened on Tuesday, July 8, 2008 and  
Adjourned sine die on Tuesday, July 8, 2008

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Published under Authority of  
Section 23G-13, Hawaii Revised Statutes  
by the  
Revisor of Statutes  
State of Hawaii  
Honolulu, Hawaii

## PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Second Special Session of 2007 and Regular and Special Sessions of 2008.

The text of the laws is printed in full except for laws repealing existing statutes. With the exception of certain obvious typographical errors which have been corrected, the text of the laws as enacted is followed.

Statutory material that is being repealed is either bracketed or bracketed and stricken. New material is indicated by underscoring. As authorized by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Ken H. Takayama  
Revisor of Statutes

Honolulu, Hawaii  
July 15, 2008

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Daniel K. Akaka

House of Representatives:  
Neil Abercrombie  
Mazie K. Hirono

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Lieutenant Governor ..... James R. Aiona, Jr.

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**Session Laws of Hawaii  
Passed By The  
Twenty-Fourth State Legislature  
Second Special Session  
2007**

**ACT 1**

H.B. NO. 2

A Bill for an Act Relating to Sentencing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to amend Hawaii's extended term sentencing law to address issues raised in recent federal court opinions and rulings on the right to a jury trial. These opinions, *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), and *Cunningham v. California*, 549 U.S. \_\_\_, 127 S.Ct. 856, 166 L.Ed.2d 856 (2007), have held that any fact, other than prior or concurrent convictions, that increases the penalty for a crime beyond the ordinary statutory maximum must be submitted to a jury and proven beyond a reasonable doubt.

On February 20, 2007, the United States Supreme Court denied the State's petition for a writ of certiorari in *Frank v. Kaua*, 549 U.S. \_\_\_, 127 S.Ct. 1233, 167 L.Ed.2d 144 (2007) and granted a writ of certiorari in *Maugaotega v. Hawaii*, 549 U.S. \_\_\_, 127 S.Ct. 1210, 167 L.Ed.2d 37 (2007). In granting the writ of certiorari in *Maugaotega*, the United States Supreme Court vacated the judgment of the Hawaii supreme court and remanded the case to the Hawaii supreme court for further consideration in light of the recently decided *Cunningham* case. After further consideration in light of the *Cunningham* case, the Hawaii supreme court issued an opinion in *State v. Maugaotega*, \_\_\_P.3d \_\_\_, 2007 WL 2823760, Oct. 1, 2007 (No. 26657), which held that statutes governing Hawaii's extended term sentencing are unconstitutional because they require a judge rather than a jury to find facts, other than those of prior or concurrent convictions, necessary to enhance a defendant's sentence beyond the ordinary or standard term authorized by the jury's verdict.

However, the Hawaii supreme court declined to exercise its inherent judicial power to order, on remand, that a jury be empanelled to find the facts necessary to impose an extended term of imprisonment. The court explained that it had done so because, when the legislature attempted, through Act 230, Session Laws of Hawaii 2006, to conform the extended term sentencing scheme to the requirements set forth by the United States Supreme Court, it did not vest in the jury the power to find the requisite facts but had instead directed that the court retain this responsibility. The end result of these cases is that the ability of the state courts to impose an extended term of imprisonment upon a discrete class of defendants is critically impaired and that convicted persons who pose a danger to the public can not be sentenced to an

extended term of imprisonment even though such a term may be both appropriate and necessary.

The purpose of this Act is to amend Hawaii's extended term sentencing statutes to ensure that the procedures used to impose extended terms of imprisonment comply with the requirements set forth by the United States Supreme Court and Hawaii supreme court. The legislature intends that these amendments apply to any case that requires resentencing because of the decisions in the *Apprendi*, *Blakely*, *Booker*, *Cunningham*, and *Maugaotega* cases. It is not the purpose of this Act to confer upon a defendant who has previously been sentenced to an extended term the right to be resentenced under the new procedures in this Act, unless the defendant is otherwise legally entitled to be resentenced. As the Hawaii supreme court held in *State v. Gomes*, 107 Haw. 308, 113 P.3d 184 (2005), the *Apprendi* rule itself does not retroactively apply to those cases in which the defendant's conviction became final prior to the United States Supreme Court's announcement of that rule in 2000. To the extent that this Act applies retroactively, the legislature finds that it does not subject any offender to additional punishment or other disadvantage.

SECTION 2. Section 706-661, Hawaii Revised Statutes, is amended to read as follows:

~~“§706-661 [Sentence of imprisonment for felony; extended terms. In the cases designated in section 706-662, a person who has been convicted of a felony may be sentenced to an extended indeterminate term of imprisonment. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:] Extended terms of imprisonment. The court may sentence a person who satisfies the criteria for any of the categories set forth in section 706-662 to an extended term of imprisonment, which shall have a maximum length as follows:~~

- (1) For murder in the second degree—life without the possibility of parole;
- (2) For a class A felony—indeterminate life term of imprisonment;
- (3) For a class B felony—indeterminate twenty-year term of imprisonment; and
- (4) For a class C felony—indeterminate ten-year term of imprisonment.

When ordering an extended term sentence, the court shall impose the maximum length of imprisonment. The minimum length of imprisonment for an extended term sentence under [§]paragraphs[§] (2), (3), and (4) shall be determined by the Hawaii paroling authority in accordance with section 706-669.”

SECTION 3. Section 706-662, Hawaii Revised Statutes, is amended to read as follows:

~~“§706-662 Criteria for extended terms of imprisonment. A [convicted] defendant [may be subject to] who has been convicted of a felony may be subject to an extended term of imprisonment under section 706-661[;] if it is proven beyond a reasonable doubt that an extended term of imprisonment is necessary for the protection of the public and that~~ the convicted defendant satisfies one or more of the following criteria:

- (1) The defendant is a persistent offender [~~whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless~~] in that the defendant has previously been convicted of two or more felonies committed at different times when the defendant was eighteen years of age or older[;];

- (2) The defendant is a professional criminal [~~whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:~~] in that:
- (a) The circumstances of the crime show that the defendant has knowingly engaged in criminal activity as a major source of livelihood; or
  - (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity[-];
- (3) The defendant is a dangerous person [~~whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:~~] in that the defendant has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct, and this history makes the defendant a serious danger to others. Nothing in this section precludes the introduction of victim-related data [~~in order~~] to establish dangerousness in accord with the Hawaii rules of evidence[-];
- (4) The defendant is a multiple offender [~~whose criminal actions were so extensive that a sentence of imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:~~] in that:
- (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for any felony; or
  - (b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively, would equal or exceed in length the maximum of the extended term imposed or would equal or exceed forty years if the extended term imposed is for a class A felony[-];
- (5) The defendant is an offender against the elderly, handicapped, or a minor [~~under the age of eight, whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:~~] eight years of age or younger in that:
- (a) The defendant attempts or commits any of the following crimes: murder, manslaughter, a sexual offense that constitutes a felony under chapter 707, robbery, felonious assault, burglary, or kidnapping; and
  - (b) The defendant, in the course of committing or attempting to commit the crime, inflicts serious or substantial bodily injury upon a person who [~~is:~~] has the status of being:
    - (i) Sixty years of age or older;
    - (ii) Blind, a paraplegic, or a quadriplegic; or
    - (iii) Eight years of age or younger; and
- [~~(c) Such disability~~] the person's status is known or reasonably should be known to the defendant[-]; or
- (6) The defendant is a hate crime offender [~~whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:~~] in that:
- (a) The defendant is convicted of a crime under chapter 707, 708, or 711; and
  - (b) The defendant intentionally selected a victim[-] or, in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person. For purposes of this subsec-

tion, “gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self-image, gender-related appearance, or gender-related expression<sup>[;]</sup>, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.”

SECTION 4. Section 706-664, Hawaii Revised Statutes, is amended to read as follows:

**“§706-664 Procedure for imposing extended terms of imprisonment. (1)** Hearings to determine the grounds for imposing extended terms of imprisonment may be initiated by the prosecutor or by the court on its own motion. The court shall not impose an extended term unless the ground therefor has been established at a hearing after the conviction of the defendant and ~~[on]~~ written notice ~~[to the defendant]~~ of the ground proposed~~[-]~~ was given to the defendant pursuant to subsection (2). Subject to the provisions of section 706-604, the defendant shall have the right to hear and controvert the evidence against the defendant and to offer evidence upon the issue~~[-]~~ before a jury; provided that the defendant may waive the right to a jury determination under this subsection, in which case the determination shall be made by the court.

(2) Notice of intention to seek an extended term of imprisonment under section 706-662 shall be given to the defendant within thirty days of the defendant’s arraignment. However, the thirty-day period may be waived by the defendant, modified by stipulation of the parties, or extended upon a showing of good cause by the prosecutor. A defendant previously sentenced to an extended term under a prior version of this chapter shall be deemed to have received notice of an intention to seek an extended term of imprisonment.

(3) If the jury, or the court if the defendant has waived the right to a jury determination, finds that the facts necessary for the imposition of an extended term of imprisonment under section 706-662 have been proven beyond a reasonable doubt, the court may impose an indeterminate term of imprisonment as provided in section 706-661.”

SECTION 5. This Act shall apply to all sentencing or resentencing proceedings pending on or commenced after the effective date of this Act, whether the offense was committed prior to, on, or after the effective date of this Act. A defendant whose extended term of imprisonment is set aside or invalidated shall be resentenced pursuant to this Act upon request of the prosecutor. This Act shall not entitle a defendant who has previously been sentenced to an extended term to be resentenced pursuant to the procedures set forth in this Act unless the defendant is otherwise legally entitled to be resentenced.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved October 31, 2007.)

## ACT 2

S.B. NO. 1

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. (a) The Hawaii supreme court has determined that chapter 343, Hawaii Revised Statutes, requires that an environmental assessment be performed with respect to certain improvements at Kahului harbor intended for and to be used by a large capacity ferry vessel company to provide inter-island ferry service between the islands of Oahu, Maui, Kauai, and Hawaii, using harbor facilities on each island, and that the environmental assessment must take into account secondary effects of the Kahului harbor improvements.

The legislature finds that the existing circumstances, specifically the construction and completion of harbor improvements and the subsequent operation of a large capacity ferry vessel company for a limited period of time, present a unique situation. Seldom, if ever, has a judicial determination overturned harbor improvements and business operations that were previously authorized by the government and approved by the lower court approximately two years earlier. Such an occurrence is not explicitly contemplated in chapter 343, Hawaii Revised Statutes, and is not consistent with the intent of the legislature. As such, the policy that applies under law should be amended and clarified.

The legislature further finds that the operation of a large capacity ferry vessel company, specifically, using a new class of large capacity ferry vessels capable of transporting large numbers of people, motor vehicles, and cargo with ease, is in the public interest in that it provides a real and innovative alternative to existing modes of transporting people, motor vehicles, and cargo between the islands of the state. With its ability to transport large quantities of cargo between islands in a very short period of time, agricultural produce would suffer less heat damage in transit, resulting in higher quality produce and fresh food products at a lower cost for all residents of the state. By encouraging the growing of products on the islands of Kauai, Maui, and Hawaii for the Oahu market, the operations of a large capacity ferry vessel company would foster diversified agriculture, helping the State of Hawaii to meet one of its constitutional mandates. Further, in times of natural or other disasters, a large capacity ferry vessel company could provide the means to rapidly deploy disaster relief personnel, equipment, and supplies.

The legislature also finds that it is clearly in the public interest that a large capacity ferry vessel service should commence as soon as possible, and that harbor improvements continue to be constructed and be allowed to be used, while any environmental studies, including any environmental assessments or environmental impact statements, are conducted.

The legislature also finds that it would be desirable and appropriate for the department of transportation to prepare or contract to prepare an environmental impact statement regarding commercial harbor improvements undertaken to accommodate a large capacity ferry vessel company and its operations, even if such an environmental impact statement may not yet be legally required. Such an environmental impact statement should include secondary impacts of such commercial harbor improvements, including impacts of a large capacity ferry vessel company and its operations.

The legislature further finds that it would be appropriate for:

- (1) An oversight task force to study the State's actions regarding the establishment of the operations of any large capacity ferry vessel company

as a whole, and the impact of any existing or proposed large capacity ferry vessel operations, and to report its findings to the legislature and governor; and

- (2) The auditor to conduct a performance audit on, among other things, how the State conducted its proceedings and determined that harbor improvements related to the operation of a certain large capacity ferry vessel company should receive an exemption from the need to conduct either an environmental assessment or environmental impact statement under chapter 343, Hawaii Revised Statutes, including why secondary impacts were not considered.

(b) This Act adopts a new policy, and further clarifies and amends existing law, with respect to this new type of inter-island ferry service to provide that, during the period in which any required environmental review and studies, including environmental assessments or environmental impact statements, are prepared, and also following their completion:

- (1) A large capacity ferry vessel company and large capacity ferry vessels may operate subject to the employment of measures to mitigate significant environmental effects;
- (2) Agreements with respect to the operations of a large capacity ferry vessel company, including a large capacity ferry vessel company operating agreement, entered into between the State and a large capacity ferry vessel company, may be enforced as written or as executed or re-executed; and
- (3) Related harbor improvements may be constructed and used by the State, by a large capacity ferry vessel company, and by others,

notwithstanding the fact that the non-preparation or non-completion of environmental assessments or environmental impact statements, the lack of acceptance of an environmental impact statement, or the lack of a finding of no significant impact, would otherwise have barred, delayed, been a condition precedent to, or interfered with paragraphs (1) through (3).

(c) This Act further clarifies and amends existing law to provide that:

- (1) Due to the unique nature and critical importance of the inter-island ferry service industry to the people of our state, the construction and use of harbor improvements to facilitate this new type of inter-island ferry service is to be governed by this Act, and not by chapter 343, Hawaii Revised Statutes; and
- (2) Such construction and use shall continue, while any environmental review and studies, including environmental assessments or environmental impact statements, are prepared and following their completion, notwithstanding the fact that the non-preparation or non-completion of environmental assessments or environmental impact statements, the lack of acceptance of an environmental impact statement, or the lack of a finding of no significant impact, would otherwise have barred, delayed, been a condition precedent to, or interfered with such construction and use.

(d) The purpose of this Act is to facilitate the establishment of inter-island ferry service and, at the same time, protect Hawaii's fragile environment by clarifying that neither the preparation of an environmental assessment, nor a finding of no significant impact, nor acceptance of an environmental impact statement shall be a condition precedent to, or otherwise be required prior to:

- (1) The operation of a large capacity ferry vessel company pursuant to any certificate of public convenience and necessity approved by the public utilities commission;

- (2) The operation of a large capacity ferry vessel company and large capacity ferry vessel between any port or harbor in Hawaii pursuant to any written operating agreement;
- (3) The construction, use, or operation of any improvements at Kahului harbor and any other harbor in the state relating to the operation of a large capacity ferry vessel company or large capacity ferry vessel;
- (4) The appropriation or expenditure of any funds, the use of state lands, the issuance of any permits, or the entering into of any agreements; or
- (5) The taking of any other necessary or appropriate actions for the purpose of facilitating any matter covered by paragraphs (1) to (4), notwithstanding the fact that the non-preparation or non-completion of environmental assessments or environmental impact statements, the lack of acceptance of an environmental impact statement, or the lack of a finding of no significant impact, would otherwise have barred, delayed, been a condition precedent to, or interfered with the same; provided that upon commencement of inter-island ferry service, the large capacity ferry vessel company shall comply with the conditions and protocols established under this Act, and with any additional conditions and protocols set by the governor by executive order, or subsequently established by the legislature by law.

(e) The purpose of this Act is also to amend all relevant existing laws to provide that, while any environmental review and studies, including environmental assessments or environmental impact statements, are prepared and following their completion:

- (1) A large capacity ferry vessel company and large capacity ferry vessels may operate;
- (2) Agreements with respect to such operation, including the operating agreements, entered into between the State and a large capacity ferry vessel company may be enforced, executed, or re-executed; and
- (3) Related harbor improvements may be constructed and used by the State, by a large capacity ferry vessel company, and by others.

PART II

SECTION 2. As used in this Act, unless the context otherwise requires:

“Large capacity ferry vessel” means any inter-island ferry vessel that transports, is designed to transport, or is intended to transport per voyage at least five hundred passengers, two hundred motor vehicles, and cargo between the islands of the state.

“Large capacity ferry vessel company” means any company that owns or operates a large capacity ferry vessel.

“State entity” means any state or county department, board, commission, and any other agency of the state or county.

“State marine waters” means all waters of the state, including the water column, water surface, and state submerged lands, extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State’s police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary, and including state harbors where appropriate, notwithstanding the depth of the harbor.

SECTION 3. Notwithstanding chapters 205A, 269, 271G, and 343, Hawaii Revised Statutes, or their state or county implementing rules or ordinances, including but not limited to provisions relating to special management area permits, certificates of public convenience and necessity, common carriers by water, environmental as-

assessments, and environmental impact statements, and further notwithstanding that environmental assessments and environmental impact statements have not been prepared or completed, or have been completed and an environmental impact statement is not accepted, is found unacceptable, or a finding of no significant impact has not been made:

- (1) A large capacity ferry vessel company shall have the right to operate and the right to utilize Kahului harbor improvements and other improvements and facilities on any island, pursuant to and subject to any and all agreements and contracts with state entities, relating to the operation of a large capacity ferry vessel and the use of state harbor facilities;
- (2) All state harbor improvements, projects, and facilities available for or to be utilized by the large capacity ferry vessel company may be completed and utilized for any purpose agreed to and authorized by appropriate state entities;
- (3) A large capacity ferry vessel company and the appropriate state entities may proceed pursuant to and subject to all executed tariffs, agreements, and contracts between the company and the state entities, whether the tariffs, agreements, and contracts may have previously been found to be in violation of chapter 343, Hawaii Revised Statutes, or any other law and may re-execute the same, including an operating agreement, in the same general form as previously executed;
- (4) The operation of large capacity ferry vessels between the islands of Oahu, Maui, Kauai, and Hawaii, including the use of harbor facilities on each island and improvements at Kahului harbor, is declared to be a required public convenience and necessity;
- (5) A certificate of public convenience and necessity issued to a large capacity ferry vessel company shall not be revoked or modified on the basis that environmental assessments or environmental impact statements have not been prepared or completed; and
- (6) The construction, use, or operation of any facilities or improvements authorized by any agreement between a large capacity ferry vessel company and a state department, board, commission, or agency shall not be subject to or require any county permits or approvals,

notwithstanding the fact that the non-preparation or non-completion of environmental assessments or environmental impact statements, the lack of acceptance of an environmental impact statement, or the lack of a finding of no significant impact, would otherwise have barred, delayed, been a condition precedent to, or interfered with the same.

SECTION 4. (a) As a condition precedent to the rights conferred by section 3 of this Act, any large capacity ferry vessel company seeking to operate pursuant to this Act shall comply with the following conditions:

- (1) Regarding whale encounters:
  - (A) Apply with the National Oceanic and Atmospheric Administration for an incidental-take permit; and
  - (B) Request an observer from the National Marine Fisheries Service, a division of the National Oceanic and Atmospheric Administration, be onboard its vessels at all times when traveling through the Hawaiian Islands Humpback Whale National Marine Sanctuary;
- (2) Regarding invasive species:
  - (A) Post signage and notify passengers beforehand of all bans, inspections, and check-in procedures and deadlines;
  - (B) Post signage and notify passengers beforehand of all bans such as the ban on the transport of fishing gill nets and fishing nets



for commercial use, or rocks, soil, or dirt or sand without a permit from the appropriate government agency. For the purposes of this paragraph, "soil or dirt" shall exclude soil or dirt in potted plants inspected and cleared for transport by the department of agriculture;

- (C) Require passengers to declare all plants, fruits, seeds, and any other biological medium and confiscate any pests for control or eradication purposes or invasive species;
  - (D) Inspect or cause to be inspected all vehicles prior to boarding, including the trunks of all cars, the beds of all pickup trucks and the undercarriage and interiors of all vehicles; and
  - (E) Promptly notify the appropriate governmental agency regarding any violation or potential violation of invasive species, agricultural, conservation or other law; and
- (3) Any other conditions or protocols the governor deems necessary and appropriate to protect the State's environment; provided that any such conditions or protocols established under this paragraph shall be executed by the governor, by means of an executive order, and without regard to chapter 91, Hawaii Revised Statutes, or any other provision of law.

Prior to the commencement of operations by a large capacity ferry vessel company pursuant to the right to operate conferred by section 3 of this Act, the governor shall notify the legislature of all the conditions or protocols established pursuant to this subsection, including the entities consulted in establishing the conditions or protocols.

(b) Any large capacity ferry vessel company authorized to operate pursuant to this Act shall execute an agreement with the State, in a form acceptable to the attorney general, by which the large capacity ferry vessel company shall expressly agree to abide by any conditions or protocols established pursuant to this section.

(c) The governor, by means of an executive order, and without regard to chapter 91, Hawaii Revised Statutes, or any other provision of law, may amend the conditions and protocols established under this section on a large capacity ferry vessel company's inter-island operations to ensure the reasonable, efficient, and expedient application of environmental protection measures set forth in this section.

In addition, the governor, by means of an executive order, and without regard to chapter 91, Hawaii Revised Statutes, or any other provision of law, shall also impose additional conditions and protocols on a large capacity ferry vessel company's inter-island operations to mitigate significant environmental effects that the governor determines, in the governor's judgment, are likely to be caused by such inter-island operations.

In making such determinations, the governor shall consider the effects such operations may have on:

- (1) Ocean life and marine animals and plants, including a whale avoidance policy and procedures;
- (2) Water resources and quality;
- (3) Harbor infrastructure;
- (4) Vehicular traffic;
- (5) Public safety and security;
- (6) Controlling the spread of invasive species;
- (7) Cultural resources, including hunting, fishing, and native Hawaiian resources;
- (8) Economic consequences and impact; and
- (9) Any other natural resource or community concern the governor deems appropriate.

The governor shall also consider establishing conditions and protocols such as requiring department of agriculture inspectors and department of land and natural resources conservation and resources enforcement personnel on each inter-island voyage conducted by a large capacity ferry vessel company, as the governor deems necessary and appropriate. If the governor establishes such agriculture inspector and conservation and resources enforcement personnel conditions and protocols, the governor shall do so by means of an executive order, and without regard to chapter 91, Hawaii Revised Statutes, or any other provision of law. The governor shall notify the legislature of any conditions or protocols established pursuant to this subsection, including the entities consulted, within ten days of establishing the condition or protocol.

The governor shall also review and determine the efficacy and appropriateness of all conditions or protocols established pursuant to this section and report to the legislature at the end of each fiscal quarter of the State on the efficacy and appropriateness of all conditions or protocols established pursuant to this section and the costs incurred by the State in establishing and maintaining the enforcement activities required under this section.

(d) The legislature reserves the sole right to:

- (1) Review the adequacy of any conditions or protocols imposed or amended by the governor under this Act; and
- (2) Impose, by law, any other conditions or protocols it deems necessary and appropriate to further protect the state's environment or communities, or both, in addition to any conditions or protocols imposed or amended by the governor under this Act,

provided that this subsection shall not be construed as a condition precedent to the rights conferred by section 3.

SECTION 5. Any large capacity ferry vessel operating in state marine waters pursuant to section 3 shall comply with all laws of general applicability, except as otherwise provided in this Act. The environmental review process for state actions in connection with a large capacity ferry vessel company shall be governed by this Act, and not by chapter 343, Hawaii Revised Statutes.

### PART III

SECTION 6. Nothing in this part shall be deemed or construed to impose a condition precedent to any activity authorized under parts I, II, or IV of this Act.

SECTION 7. As used in this part, unless the context otherwise requires:

"Acceptance" means a formal determination of acceptability that the document required to be filed pursuant to this part, fulfills the definitions and requirements of an environmental impact statement, adequately describes identifiable environmental impacts, and satisfactorily responds to comments received during the review of the statement. Acceptance does not mean that the action is environmentally sound or unsound, but only that the document complies with this part.

"Action" means any program or project that is proposed or completed by the department and covered by this part.

"Addendum" means an attachment to a draft environmental impact statement, prepared at the discretion of the department, and distinct from a supplemental statement, for the purpose of disclosing and addressing clerical errors such as inadvertent omissions, corrections, or clarifications to information already contained in the draft environmental impact statement already filed with the office.

"Agency" means any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.

“Approval” means a discretionary consent required from an agency. Discretionary consent means a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent. Ministerial consent means a consent, sanction, or recommendation from an agency upon a given set of facts, as prescribed by law or rule without the use of judgment or discretion.

“Cumulative impact” means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

“Department” means the department of transportation.

“Effects” or “impacts” as used in this part are synonymous. Effects may include ecological effects (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic effects, historic effects, cultural effects, economic effects, social effects, or health effects, whether primary, secondary, or cumulative. Effects may also include those effects resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

“Environment” means humanity’s surroundings, inclusive of all the physical, economic, cultural, and social conditions that exist within the area affected by an action, including land, human and animal communities, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

“Environmental impact” means an effect of any kind, whether immediate or delayed, on any component of the environment.

“Environmental impact statement” or “statement” means an informational document prepared in compliance with this part and which discloses the environmental effects of an action, effects of an action on the economic welfare, social welfare, and cultural practices of the community and state, effects of the economic activities arising out of the action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished from the final statement which is the document that has incorporated the public’s comments and the responses to those comments. The final statement is the document that shall be evaluated for acceptability by the office.

“Office” means the office of environmental quality control.

“Person” includes any individual, partnership, firm, association, trust, estate, private corporation, or other legal entity other than an agency.

“Primary impact” or “primary effect” or “direct impact” or “direct effect” means effects which are caused by the action and occur at the same time and place.

“Secondary impact” or “secondary effect” or “indirect impact” or “indirect effect” means effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water, and other natural systems, including ecosystems.

“Significant effect” or “significant impact” means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State’s environmental policies or long-term environmental goals and guidelines as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and state.

SECTION 8. The department of transportation shall prepare or contract to prepare an environmental impact statement for the improvements made or to be made to commercial harbors throughout the state that require the expenditure of public funds to accommodate the use thereof by a large capacity ferry vessel company and the secondary effects of those operations on the state's environment, including the operation of the large capacity ferry vessel company.

SECTION 9. (a) The environmental impact statement required to be prepared under this part by the department shall comply with and be in conformity with the provisions of this part.

(b) The environmental impact statement process shall involve at a minimum:

- (1) Identifying environmental concerns;
- (2) Obtaining various relevant data;
- (3) Conducting necessary studies;
- (4) Receiving public and agency input;
- (5) Evaluating alternatives; and
- (6) Proposing measures for avoiding, minimizing, rectifying, or reducing adverse impacts.

An environmental impact statement is meaningless without the conscientious application of the environmental impact statement process as a whole, and shall not be merely a self-serving recitation of benefits and a rationalization of the action, but shall discuss adverse effects and available alternatives, so that decision-makers will be enlightened to any environmental consequences of the action. In preparing the environmental impact statement, the department shall submit it for review and comments, and revise it, taking into account all critiques and responses.

(c) In developing the statement, preparers shall make every effort to convey the required information succinctly in a form easily understood both by members of the public and by public decision-makers, giving attention to the substance of the information conveyed rather than to the particular form, length, or detail of the statement. Data and analyses in the statement shall be commensurate with the importance of the impact, and less important material may be summarized, consolidated, or simply referenced. Statements shall indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement, including cost-benefit analyses and reports required under other legal authorities. Care shall be taken to concentrate on important issues and to ensure that the statement remains an essentially self-contained document, capable of being understood by the reader without the need for undue cross-reference.

(d) The environmental impact statement shall contain an explanation of the environmental consequences of the action. The contents shall fully declare the environmental implications of the action and shall discuss all relevant and feasible consequences of the action. In order that the public can be fully informed and that the department can make a sound decision based upon the full range of responsible opinions on environmental effects, the statement shall include responsible opposing views, if any, on significant environmental issues raised by the action.

(e) In the preparation of a draft statement, the department shall consult all appropriate agencies and other citizen groups, and concerned individuals. To this end, the department shall endeavor to develop a fully acceptable environmental impact statement prior to the time the statement is filed with the office, through a full and complete consultation process, and shall not rely solely upon the review process to expose environmental concerns.

(f) Any substantive comments received by the department pursuant to this part shall be responded to in writing and as appropriate, incorporated into the draft environmental impact statement by the department prior<sup>1</sup> its filing with the office.

Letters submitted which contain no comments on the project but only serve to acknowledge receipt of the document do not require a written response. Acknowledgement of receipt of these items shall be included in the final statement.

SECTION 10. (a) The draft environmental impact statement, at a minimum, shall contain:

- (1) A summary sheet which concisely discusses the following:
  - (A) Brief description of the action;
  - (B) Significant beneficial and adverse impacts, including cumulative impacts and secondary impacts;
  - (C) Proposed mitigation measures;
  - (D) Alternatives considered;
  - (E) Unresolved issues; and
  - (F) Compatibility with land use plans and policies, and a listing of permits or approvals;
- (2) A table of contents;
- (3) A separate and distinct section that includes a statement of purpose and need for the action;
- (4) A project description which shall include the following information, but need not supply extensive detail beyond that needed for evaluation and review of the environmental impact:
  - (A) A detailed map, preferably a United States Geological Survey topographic map, Flood Insurance Rate Maps or Floodway Boundary Maps as applicable, and a related regional map;
  - (B) Statement of objectives;
  - (C) General description of the action's technical, economic, social, and environmental characteristics;
  - (D) Use of public funds or lands for the action;
  - (E) Phasing and timing of action;
  - (F) Summary technical data, diagrams, and other information necessary to permit an evaluation of potential environmental impact by commenting agencies and the public; and
  - (G) Historic perspective;
- (5) A separate and distinct section of alternatives which could attain the objectives of the action, regardless of cost, in sufficient detail to explain why they were rejected. The section shall include a rigorous exploration and objective evaluation of the environmental impacts of all such alternative actions. Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks. Examples of alternatives include:
  - (A) The alternative of no action;
  - (B) Alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts;
  - (C) Alternatives related to different designs or details of the actions which would present different environmental impacts;
  - (D) The alternative of postponing action pending further study; and
  - (E) Alternative locations for the proposed project, as appropriate.

In each case, the analysis shall be sufficiently detailed to allow the comparative evaluation of the environmental benefits, costs, and risks of the action and each reasonable alternative, including, if relevant, those alternatives not within the existing authority of the department;

- (6) A description of the environmental setting, including a description of the environment in the vicinity of the action, as it exists before commencement of the action, from both a local and regional perspective. Special emphasis shall be placed on environmental resources that are rare or unique to the region and the project site, including natural or human-made resources of historic, archaeological, or aesthetic significance; specific reference to related projects, public and private, existent or planned in the region shall also be included for purposes of examining the possible overall cumulative impacts of such actions. The department shall also identify, if appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the action and determine secondary population and growth impacts resulting from the action and its alternatives. The sources of data used to identify, qualify, or evaluate any and all environmental consequences shall be expressly noted;
- (7) A statement of the relationship of the action to land use plans, policies, and controls for the affected area. Discussion of how the action may conform or conflict with objectives and specific terms of approved or proposed land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the statement shall describe the extent to which the department has reconciled its action with the plan, policy, or control, and the reasons why the department has decided to proceed, notwithstanding the absence of full reconciliation. The draft statement shall also contain a list of necessary approvals which were obtained from governmental agencies, boards, or commissions or other similar groups having jurisdiction;
- (8) A statement of the probable impact of the action on the environment, and impacts of the natural or human environment on the project, which shall include consideration of all phases of the action and consideration of all consequences on the environment; direct and indirect effects shall be included. The interrelationships and cumulative environmental impacts of the action and other related projects shall be discussed in the draft statement. Secondary effects shall be thoroughly discussed to fully describe the probable impact of the action on the environment. The population and growth impacts of an action shall be estimated if expected to be significant, and an evaluation made of the effects of any possible change in population patterns or growth upon the resource base, including but not limited to land use, water, and public services, of the area in question. Also, if the action constitutes a direct or indirect source of pollution as determined by any governmental agency, necessary data shall be incorporated into the statement. The significance of the impacts shall be discussed in terms of paragraphs (9), (10), (11), and (12);
- (9) A separate and distinct section describing the relationship between local short-term uses of humanity's environment and the maintenance and enhancement of long-term productivity. The extent to which the action involves trade-offs among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the action forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms of the environmentally significant consequences of the action;
- (10) A separate and distinct section that describes all irreversible and irretrievable commitments of resources that would be involved in the action

should it be implemented. Identification of unavoidable impacts and the extent to which the action makes use of non-renewable resources during the phases of the action, or irreversibly curtails the range of potential uses of the environment shall also be included. The possibility of environmental accidents resulting from any phase of the action shall also be considered. "Resources" shall not be interpreted to mean only the labor and materials devoted to an action, but to include the natural and cultural resources committed to loss or destruction by the action;

- (11) All probable adverse environmental effects which cannot be avoided. Any adverse effects such as water or air pollution, urban congestion, threats to public health, or other consequences adverse to environmental goals and guidelines established by environmental response laws, coastal zone management laws, pollution control and abatement laws, and environmental policy such as those found in chapters 128D, 205A, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342N, 342P, and 344, Hawaii Revised Statutes, shall be included, including those effects discussed in other actions of this paragraph which are adverse and unavoidable under the action. Also, the rationale for proceeding with an action, notwithstanding unavoidable effects, shall be clearly set forth in this section. The draft statement shall indicate what other interests and considerations of governmental policies are thought to offset the adverse environmental effects of the action. The statement shall also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the action that would avoid some or all of the adverse environmental effects;
- (12) Mitigation measures proposed to avoid, minimize, rectify, or reduce impact, including provisions for compensation for losses of cultural, community, historical, archaeological, fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures included in the action plan to reduce significant, unavoidable, adverse impacts to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. Included, where possible and appropriate, should be specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to assure that the mitigation measures will in fact be taken;
- (13) A separate and distinct section that summarizes unresolved issues and containing a discussion of how such issues will be resolved;
- (14) A separate and distinct section that contains a list identifying all governmental agencies, other organizations, and private individuals consulted in preparing the statement, and the identity of the persons, firms, or agency preparing the statement, by contract or other authorization, shall be disclosed; and
- (15) A separate and distinct section that contains reproductions of all substantive comments and responses made during the consultation process. A list of those persons or agencies who were consulted and had no comment shall be included in the draft statement.
  - (b) The final environmental impact statement shall consist of:
    - (1) The draft statement revised to incorporate substantive comments received during the consultation and review processes;

- (2) Reproductions of all letters received containing substantive questions, comments, or recommendations and, as applicable, summaries of any scoping meetings held;
- (3) A list of persons, organizations, and public agencies commenting on the draft statement; and
- (4) The responses of the department to each substantive question, comment, or recommendation received in the review and consultation processes. The text of the final statement shall be written in a format which allows the reader to easily distinguish changes made to the text of the draft statement.

SECTION 11. (a) The department shall file the original (signed) draft environmental impact statement with the office, along with a minimum number of copies determined by the office.

(b) The department shall file the original (signed) final statement with the office, along with a minimum number of copies determined by the office.

(c) An environmental impact statement may be filed at any time at the office by the department.

The office shall inform the public of the availability of any statements or addendum documents for review and comments, and the acceptance or non-acceptance of statements through the periodic bulletin used by the office. The bulletin shall be made available to any person upon request.

All submittals to the office for publication in the bulletin shall be accompanied by a completed informational form which provides whatever information the office needs to properly notify the public. The information requested may include the following: the title of the action; the islands affected by the action; tax map key numbers; street addresses; nearest geographical landmarks; latitudinal and longitudinal coordinates; the type of document prepared; the names, addresses, and contact persons as applicable, of the office, department, and the consultant; and a brief narrative summary of the action which provides sufficient detail to convey the full impact of the action to the public.

The office may provide recommendations to the department regarding any applicable administrative content requirements set forth in this part.

(d) The department shall sign and date the original copy of the draft or final environmental impact statement and shall indicate that the statement and all ancillary documents were prepared under the signatory's direction or supervision and that the information submitted, to the best of the signatory's knowledge, fully addresses document content requirements as set forth in this part.

(e) All statements and other related documents shall be made available for inspection by the public during established office hours.

(f) The office shall be responsible for the publication of the notice of availability of the environmental impact statement in its periodic bulletin. The office shall develop a distribution list of reviewers (i.e., persons and agencies with jurisdiction or expertise in certain areas relevant to various actions) and a list of public depositories, which shall include public libraries, where copies of the statements shall be available, to be developed cooperatively between the department and the office; provided that the office shall be responsible for determining the final list. To the extent possible, the department shall make copies of the statement available to individuals requesting the statement. The department shall directly distribute the required copies to those on the distribution list after the office has verified with the department the accuracy of the distribution list. For final statements, the department shall give the commentator an option of requesting a copy of the final statement or portions thereof.

(g) The draft and final statements shall be prepared by the department and submitted to the office. The draft statement shall be made available for public re-



view and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to this part. The department shall respond in writing to comments received during the review and prepare a final statement.

(h) Review of the environmental impact statement shall serve to provide the public and other agencies an opportunity to discover the extent to which the department has examined environmental concerns and available alternatives. Public review shall not substitute for open discussion with interested persons and agencies, concerning the environmental impacts of the action.

(i) The period for public review and for submitting written comments shall commence as of the date notice of availability of the draft statement is initially issued in the periodic bulletin and shall continue for a period of forty-five days. Written comments to the office, with a copy of the comments to the department, shall be received or postmarked to the office within the forty-five day period. Any comments outside of the forty-five day comment period need not be considered or responded to.

(j) The department shall respond in writing to the comments received or post-marked during the forty-five day review period and incorporate the comments and responses in the final statement. The response to comments shall include:

- (1) Point-by-point discussion of the validity, significance, and relevance of comments; and
- (2) Discussion as to how each comment was evaluated and considered in planning the action.

The response shall endeavor to resolve conflicts, inconsistencies, or concerns. Response letters reproduced in the text of the final statement shall indicate verbatim changes that have been made to the text of the draft statement. The response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections, etc.). In particular, the issues raised when the department's position is at variance with recommendations and objections raised in the comments shall be addressed in detail, giving reasons why specific comments and suggestions were not accepted, and factors of overriding importance warranting an override of the suggestions.

(k) Any addendum document to a draft environmental impact statement shall reference the original draft environmental impact statement it attaches to and comply with all applicable filing, public review, and comment requirements set forth in this part.

SECTION 12. (a) The final authority to accept a final statement required under this part shall rest with the office, or the office's authorized representative. The department may request the office to make a preliminary review regarding the acceptability or non-acceptability of the environmental impact statement. The office, when requested by the department, may review and make a recommendation as to the acceptability of the final statement.

(b) The office shall take prompt measures to determine the acceptability or non-acceptability of the department's statement.

(c) Acceptability of a statement shall be evaluated on the basis of whether the statement, in its completed form, represents an informational instrument which fulfills the definition of an environmental impact statement and adequately discloses and describes all identifiable environmental impacts and satisfactorily responds to review comments.

(d) A statement shall be deemed to be an acceptable document by the office only if all of the following criteria are satisfied:

- (1) The procedures for consultation process, review, and the preparation and submission of the statement, have all been completed satisfactorily as specified in this part;
- (2) The content requirements described in this part have been satisfied; and
- (3) Comments submitted during the review process have received responses satisfactory to the office, and have been incorporated in the statement.

(e) Upon acceptance or non-acceptance of the environmental impact statement, a notice of the determination shall be filed by the office with the department. For any non-accepted statement, the notice shall contain specific findings and reasons for non-acceptance. The office shall publish notice of the determination of acceptance or non-acceptance in the periodic bulletin.

(f) A non-accepted statement shall be revised by the department to address the concerns of the office. The revision shall take the form of a revised draft environmental impact statement document which shall fully address the inadequacies of the non-accepted statement and shall completely and thoroughly discuss the changes made. The requirements for filing, distribution, publication of availability for review, acceptance or non-acceptance, and notification and publication of acceptability shall be the same as the requirements prescribed by this part for an environmental impact statement submitted for acceptance. In addition, the revised draft statement shall be evaluated for acceptability on the basis of whether it satisfactorily addresses the findings and reasons for non-acceptance.

(g) The department may withdraw an environmental impact statement by sending a letter to the office informing the office of the department's withdrawal. Subsequent resubmittal of the statement shall meet all requirements for filing, distribution, publication, review, acceptance, and notification as a new statement.

#### PART IV

SECTION 13. (a) There is established under the department of transportation, a temporary Hawaii inter-island ferry oversight task force. The department of transportation shall be responsible for administering the work of the temporary Hawaii inter-island ferry oversight task force, providing a facilitator, and submitting reports to the legislature and governor. The goal of the temporary Hawaii inter-island ferry oversight task force shall be to study the State's actions regarding the establishment of the operations of any large capacity ferry vessel company as a whole and to examine the impact, if any, of the operations of any existing or proposed large capacity ferry vessel company on:

- (1) Ocean life and marine animals and plants, including but not limited to an existing or proposed inter-island ferry operations' whale avoidance policy and procedures;
- (2) Water resources and quality;
- (3) Harbor infrastructure;
- (4) Vehicular traffic;
- (5) Public safety and security;
- (6) The potential to spread invasive species;
- (7) Cultural resources, including hunting, fishing, and native Hawaiian resources;
- (8) Economic consequences and impact; and
- (9) Any other natural resource or community concern.

(b) The members of the temporary Hawaii inter-island ferry oversight task force, totaling thirteen members, shall include the following:

- (1) The director of transportation, or the director's designee;
- (2) The chairperson of the board of agriculture, or the chair's designee;

- (3) The chairperson of the board of land and natural resources, or the chairperson's designee;
- (4) The attorney general, or the attorney general's designee;
- (5) The president of a large capacity ferry vessel company, or the president's designee;
- (6) One representative from each of the four major counties, including at least one representative from the environmental community, one representative who is active or knowledgeable in native Hawaiian cultural practices, and one representative from the general business community; provided that each such representative shall be appointed by the speaker of the house of representatives; and
- (7) One representative from each of the four major counties, including at least one representative from the environmental community, one representative who is active or knowledgeable in native Hawaiian cultural practices, and one representative from the general business community; provided that each such representative shall be appointed by the president of the senate.

(c) Members of the temporary Hawaii inter-island ferry oversight task force shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties. All expenses, including travel expenses, shall be paid by the department of transportation.

(d) The temporary Hawaii inter-island ferry oversight task force shall submit monthly status reports of its findings and recommendations to the legislature and governor at the end of each month commencing with December 31, 2007. The temporary Hawaii inter-island ferry oversight task force shall include, in its monthly status reports, at a minimum:

- (1) A listing and description of the mitigation measures established to deter or minimize any adverse environmental impact of the large capacity ferry vessel company and its operations; and
- (2) A review of the mitigation measures implemented and the efficacy of those mitigation measures on deterring or minimizing any adverse environmental impact caused by the operation of the large capacity ferry vessel company and its vessels.

(e) The temporary Hawaii inter-island ferry oversight task force shall submit a final report of its findings and recommendations to the legislature and governor no later than twenty days prior to the convening of the regular session of 2009 and shall cease to exist upon the submission of the final report.

SECTION 14. (a) The auditor shall conduct a performance audit on the state administration's actions in exempting certain harbor improvements to facilitate large capacity ferry vessels from the requirements of conducting an environmental assessment or environmental impact statement under chapter 343, Hawaii Revised Statutes. The audit shall also include the state administration's actions in not considering potential secondary environmental impacts of the harbor improvements prior to granting the exemption from these requirements. The governor and any other state officer deemed appropriate by the auditor are requested to provide all documents and information deemed relevant by the auditor in the conduct of the performance audit and otherwise fully cooperate with the auditor's requests made pursuant to this section.

(b) The auditor shall submit the performance audit to the legislature no later than March 1, 2008. If the performance audit is not completed by March 1, 2008, the auditor shall submit a preliminary report by that date and a final report as soon as possible thereafter, but no later than April 20, 2008.

SECTION 15. Any previously made appropriation or previously authorized expenditure of funds for any inter-island ferry operations of a large capacity ferry vessel company, or for improvements or operating expenses to accommodate its provision of inter-island ferry service, shall be approved and authorized to the extent they are needed to effectuate the provisions of this Act.

Any state lands previously authorized to be used to facilitate or support the operation of a large capacity ferry vessel, shall be authorized to be used to effectuate the provisions of this Act.

Any state harbor improvement or state or county facilities previously made or made available to facilitate or support the operation of a large capacity ferry vessel may be used by any large capacity ferry vessel company or any other person to effectuate the provisions of this Act.

Any certificate of public convenience and necessity previously issued to a large capacity ferry vessel company may be used to effectuate the provisions of this Act.

Any tariffs issued for the purpose of facilitating the provision of service by a large capacity ferry vessel may be used to effectuate the provisions of this Act.

Any agreements between the department of transportation or the state and a large capacity ferry vessel company previously entered into for the purpose of facilitating the provision of service by a large capacity ferry vessel may be used to effectuate the provisions of this Act.

SECTION 16. Every large capacity ferry vessel company that has the legal right to operate pursuant to section 3 of this Act, during the time period this Act is effective, by exercising such right to operate at any time this Act is effective, by such operation, releases and waives any and all claims that have accrued or arisen as of the effective date of this Act for damages or other judicial relief it or any of its agents, successors, and assigns might otherwise have or assert against the State of Hawaii, its agencies, and its officers and employees, in both their official and individual capacities, that have or may have been caused by or are related in any way to:

- (1) The need, requirement, preparation, non-preparation, acceptance, or lack of acceptance of or for any environmental assessments or environmental impact statements; or
- (2) Any judicial action regarding the establishment and operation of the large capacity ferry vessel in the state,

and such large capacity ferry vessel company by such operation accepts the obligation to, and thus shall indemnify and defend the State of Hawaii, its agencies, and its officers and employees, in both their official and individual capacities, from such claims brought by, through, or under the large capacity ferry vessel company, or any of its agents, successors, and assigns.

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 18. This Act shall take effect upon its approval; provided that this Act shall be repealed on the earlier of:

- (1) The forty-fifth day, excluding Saturdays, Sundays, and holidays, following adjournment sine die of the regular session of 2009; or
- (2) Upon acceptance of the final environmental impact statement as provided in this Act; and

provided further that:

- (1) The final environmental impact statement by the department of transportation that is accepted by the office of environmental quality control under this Act shall be and remain effective for all purposes under the laws of this state, notwithstanding the repeal of this Act; and
- (2) Section 16 of this Act shall not be repealed when this Act is repealed.

(Approved November 2, 2007.)

**Note**

1. So in original.

**Session Laws of Hawaii**  
**Passed By The**  
**Twenty-Fourth State Legislature**  
**Regular Session**  
**2008**

**ACT 1**

H.B. NO. 2688

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Auditor, the Legislative Reference Bureau, and the Ombudsman.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,694,360 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the senate up to and including June 30, 2009, including the 2008 regular session, twenty-fourth legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2008 and 2009 regular sessions.

The sum appropriated in this section shall be expended by the senate.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$11,670,163 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the house of representatives up to and including June 30, 2009, including the 2008 regular session, twenty-fourth legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2008 and 2009 regular sessions.

The sum appropriated in this section shall be expended by the house of representatives.

SECTION 3. Payment of expenses of the senate during the interim between the 2008 and 2009 regular sessions shall be made only with the approval of the president of the senate, and payment of expenses of the house of representatives during the interim between the 2008 and 2009 sessions shall be made only with the approval of the speaker of the house of representatives.

SECTION 4. Before January 21, 2009, the senate and the house of representatives shall each have their accounts audited, and a full report of the respective audits shall be presented to the senate and to the house of representatives convening on January 21, 2009.

SECTION 5. Unless otherwise prescribed by law, the expenses of any member of the legislature while traveling abroad on official business of the legislature

## ACT 1

shall be \$130 a day as authorized by the president of the senate and the speaker of the house of representatives, respectively.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,945,977 or so much thereof as may be necessary to the office of the auditor for the following expenses:

- (1) The sum of \$2,910,685 for defraying the expenses of the office of the auditor during fiscal year 2008-2009;
- (2) The sum of \$885,292 for defraying the expenses of the office of the state ethics commission during fiscal year 2008-2009; and
- (3) The sum of \$150,000 during fiscal year 2008-2009 for:
  - (A) Performing special studies;
  - (B) Improving capabilities for planning, programming, and budgeting;
  - (C) Fulfilling other special requests made of the auditor by the legislature or jointly by the president of the senate and the speaker of the house of representatives;
  - (D) Legislative studies and contractual services for those studies; and
  - (E) Such other purposes as may be determined by the joint action of the president of the senate and the speaker of the house of representatives.

The sum appropriated in this section shall be expended by the auditor.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,429,360 or so much thereof as may be necessary to the office of the auditor during fiscal year 2008-2009 to be deposited into the audit revolving fund established pursuant to section 23-3.6, Hawaii Revised Statutes.

SECTION 8. There is appropriated out of the audit revolving fund the sum of \$5,600,438 or so much thereof as may be necessary to the office of the auditor during fiscal year 2008-2009 for the auditor to conduct or complete its audit functions as provided by law.

The sum appropriated in this section shall be expended by the auditor.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,449,623 or so much thereof as may be necessary to the legislative reference bureau for defraying the expenses of the legislative reference bureau during fiscal year 2008-2009, including equipment relating to computer systems programming and operations.

The sum appropriated in this section shall be expended by the legislative reference bureau.

SECTION 10. Notwithstanding chapter 103D, Hawaii Revised Statutes, the legislative reference bureau shall contract with the University of Hawaii to conduct a study of the State's environmental review process. The study shall:

- (1) Examine the effectiveness of the current environmental review system created by chapters 341, 343, and 344, Hawaii Revised Statutes;
- (2) Assess the unique environmental, economic, social, and cultural issues in Hawaii that should be incorporated into an environmental review system;
- (3) Address larger concerns and interests related to sustainable development, global environmental change, and disaster-risk reduction; and

- (4) Develop a strategy, including legislative recommendations, for modernizing Hawaii's environmental review system so that it meets international and national best-practices standards.

In addition, the study shall be conducted in accordance with the provisions of any other act that addresses the comprehensive study of the environmental review process described in this section.

The study shall be submitted to the legislature no later than twenty days prior to the convening of the regular session of 2010 or by an earlier date expressly set by any other relevant Act.

There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000, or so much thereof as may be necessary to the legislative reference bureau during fiscal year 2008-2009 to contract with the University of Hawaii to conduct the study required by this section.

The sum appropriated shall be expended by the legislative reference bureau for the purposes of this section.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,060,728 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 2008-2009.

The sum appropriated in this section shall be expended by the ombudsman.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the following sums or so much thereof as may be necessary for defraying the expenses of the legislative information system:

- (1) \$900,000 to the senate; and
- (2) \$900,000 to the house of representatives.

This appropriation shall be used to pay for hardware, software, consultants, installation, materials, supplies, and other related costs associated with the legislative information system that have been or will be incurred.

The sums appropriated in this section shall be expended by the senate and the house of representatives, respectively.

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,000 or so much thereof as may be necessary for the legislative broadcast program, including the production and distribution of television broadcasts of legislative proceedings.

The sum appropriated in this section shall be expended by the legislature for the purposes of this section.

SECTION 14. Except for moneys in the audit revolving fund, as of the close of business on June 30, 2009, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 15. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 16. This Act shall take effect upon its approval.

(Approved February 13, 2008.)



A Bill for an Act Making an Emergency Appropriation for Electricity, Sewer, Refuse, and Insurance Premium Payments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to make an emergency appropriation to address a projected \$271,852 deficit in electricity, sewer, refuse, and insurance premium payments for the stadium authority, department of accounting and general services. Since local utility companies are dependent upon oil as the primary source of fuel, high world oil prices have directly contributed to this shortfall. Although kilowatt per hour consumption has remained flat or decreased, increased worldwide demand and geopolitical concerns all contribute to keep oil prices high. Based on a combination of actual bills paid and projected cost, the shortfall for fiscal year 2007-2008 is anticipated to be \$13,973 for the stadium authority. City-wide increases for sewer assessments have averaged approximately twenty-five percent beginning this summer. For the stadium authority, the increase is eighty-two percent (old rate \$3.42 per 1,000 gallons, new rate \$6.22 per 1,000 gallons) over last year, resulting in an unanticipated increase of \$123,800. Because of the increase in tipping fees and fuel oil, the stadium authority was forced to rebid its refuse collection contract. The old contractor simply could not continue with the service without incurring a loss. The new contract has resulted in a substantial increase of \$92,100 for refuse removal services to the program. World-wide, insurance premiums have increased for homeowners and businesses alike. The stadium authority is not an exception. Originally, \$30,000 had been budgeted for this operational expense. However, the premiums for the stadium authority more than doubled to \$71,979, leaving a shortfall of \$41,979. Without an emergency appropriation, the program must defer payments or not pay its June 2008 bills.

SECTION 3. There is appropriated out of the stadium special fund of the State of Hawaii the sum of \$271,852, or so much thereof as may be necessary, for fiscal year 2007-2008 for the purpose of paying electricity, sewer, refuse, and insurance premium bills. The sum appropriated shall be expended by the stadium authority, department of accounting and general services.

SECTION 4. This Act shall take effect upon its approval.

(Approved March 25, 2008.)

A Bill for an Act Making an Emergency Appropriation for Electricity Payments Statewide.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to make an emergency appropriation to address a projected \$1,000,000 deficit in electricity payments for the department of accounting and general services managed facilities statewide. Since local utility companies are dependent upon oil as the primary source of fuel, the high world oil prices have directly contributed to this shortfall. Although kilowatt per hour consumption has remained flat or decreased, increased worldwide demand, the threat of terrorism, geopolitical concerns, oil processing glitches and natural disasters all contribute to keep oil prices high and can further increase oil prices in the near future. Based on a combination of actual bills paid and projected cost, the shortfall for fiscal year 2007-2008 is \$1,000,000 for Oahu and the neighbor islands. Without an emergency appropriation, the program must defer payment on its May and June 2008 bills.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary, for fiscal year 2007-2008 for the purpose of paying electricity bills. The sum appropriated shall be expended by the department of accounting and general services.

SECTION 4. This Act shall take effect upon its approval.

(Approved March 25, 2008.)

## ACT 4

S.B. NO. 2292

A Bill for an Act Relating to Automated Teller Machines.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to require that an agreement to operate or share an automated teller machine may not prohibit, limit, or restrict the right of the owner or operator of the automated teller machine to charge a transaction fee to a person who uses an automated teller machine card or other access device for an account that is located within or without the United States.

SECTION 2. Chapter 412, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§412- Authority of owners or operators of automated teller machines.**

An owner or operator of an automated teller machine may assess a transaction fee on any person for use of that machine who uses a card or other access device for an account that is located within or without the United States.

Agreements to operate or share an automated teller machine may not prohibit, limit, or restrict the right of the owner or operator of the automated teller machine to charge a person a transaction fee.”

SECTION 3. The Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

**“§ - Authority of owners or operators of automated teller machines.**

An owner or operator of an automated teller machine may assess a transaction fee on any person for use of that machine who uses a card or other access device for an account that is located within or without the United States.

## ACT 5

Agreements to operate or share an automated teller machine may not prohibit, limit, or restrict the right of the owner or operator of the automated teller machine to charge a person a transaction fee.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved March 31, 2008.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 5

S.B. NO. 3027

A Bill for an Act Relating to Osteopathy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 453-1, Hawaii Revised Statutes, is amended to read as follows:

“**§453-1 Practice of medicine defined.** For the purposes of this chapter the practice of medicine by a physician or an osteopathic physician includes the use of drugs and medicines, water, electricity, hypnotism, osteopathic medicine, or any means or method, or any agent, either tangible or intangible, for the treatment of disease in the human subject; provided that when a duly licensed physician or osteopathic physician pronounces a person affected with any disease hopeless and beyond recovery and gives a written certificate to that effect to the person affected or the person’s attendant nothing herein shall forbid any person from giving or furnishing any remedial agent or measure when so requested by or on behalf of the affected person.

This section shall not amend or repeal the law respecting the treatment of those affected with Hansen’s disease.

For purposes of this chapter, “osteopathic medicine” means the utilization of full methods of diagnosis and treatment in physical and mental health and disease, including the prescribing and administration of drugs and biologicals of all kinds, operative surgery, obstetrics, radiological, and other electromagnetic emissions, and placing special emphasis on the interrelation of the neuro-musculoskeletal system to all other body systems, and the amelioration of disturbed structure-function relationships by the clinical application of the osteopathic diagnosis and therapeutic skills for the maintenance of health and treatment of disease.”

SECTION 2. Section 453-1.5, Hawaii Revised Statutes, is amended to read as follows:

“**[H]§453-1.5[H] Pain management guidelines.** The board of medical examiners may establish guidelines for physicians or osteopathic physicians with respect to patients’ pain management. The guidelines shall apply to all patients with severe acute pain or severe chronic pain, regardless of the patient’s prior or current chemical dependency or addiction, and may include standards and procedures for chemically dependent individuals.”

SECTION 3. Section 453-2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Except as otherwise provided by law, no person shall practice medicine or surgery in the State, either gratuitously or for pay, or offer to practice medicine or surgery in the State, or advertise or announce one’s self, either publicly or privately, as prepared or qualified to practice medicine or surgery in the State, or append the letters “Dr.” ~~[or]~~, “M.D.”, or “D.O.” to one’s name with the intent to imply that the person is a practitioner of medicine or surgery, without having a valid unrevoked license or a limited and temporary license obtained from the board of medical examiners.

(b) Nothing herein shall:

- (1) Apply to so-called Christian Scientists; provided that the Christian Scientists practice the religious tenets of their church without pretending a knowledge of medicine or surgery;
- (2) Prohibit service in the case of emergency or the domestic administration of family remedies;
- (3) Apply to any commissioned medical officer in the United States armed forces or public health service engaged in the discharge of one’s official duty, nor to any practitioner of medicine and surgery from another state when in actual consultation, including in-person, mail, electronic, telephonic, fiber-optic, or other telemedicine consultation with a licensed physician or osteopathic physician of this State, if the physician or osteopathic physician from another state at the time of ~~[such]~~ consultation is licensed to practice in the state in which the physician or osteopathic physician resides; provided that:
  - (A) The physician or osteopathic physician from another state shall not open an office, or appoint a place to meet patients in this State, or receive calls within the limits of the State for the provision of care for a patient who is located in this State;
  - (B) The licensed physician or osteopathic physician of this State retains control and remains responsible for the provision of care for the patient who is located in this State; and
  - (C) The laws and ~~[regulations]~~ rules relating to contagious diseases are not violated;
- (4) Prohibit services rendered by any person certified under part II of this chapter to provide emergency medical services, or any physician assistant, when the services are rendered under the direction and control of a physician or osteopathic physician licensed in this State except for final refraction resulting in a prescription for spectacles, contact lenses, or visual training as performed by an oculist or optometrist duly licensed by the State. The direction and control shall not be construed in every case to require the personal presence of the supervising and controlling physician[-] or osteopathic physician. Any physician or osteopathic physician who employs or directs a person certified under part II of this chapter to provide emergency medical services, or a physician assistant, shall retain full professional and personal responsibility for any act ~~[which]~~ that constitutes the practice of medicine when performed by ~~[such]~~ the certified person or physician assistant;
- (5) Prohibit automated external defibrillation by:
  - (A) Any first responder personnel certified by the department of health to provide automated external defibrillation when it is rendered under the medical oversight of a physician or osteopathic physician licensed in this State; or
  - (B) Any person acting in accordance with section 663-1.5(e); or

- (6) Prohibit a radiologist duly licensed to practice medicine and provide radiology services in another state from using telemedicine while located in this State to provide radiology services to a patient who is located in the state in which the radiologist is licensed. For the purposes of this paragraph:

“Radiologist” means a doctor of medicine or a doctor of osteopathy certified in radiology by the American Board of Radiology or the American Board of Osteopathy.

“Telemedicine” means the use of telecommunications services, as that term is defined in section 269-1, including real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, such as diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, and deliver health care services and information to parties separated by distance.”

SECTION 4. Section 453-3, Hawaii Revised Statutes, is amended to read as follows:

“§453-3 Limited and temporary licenses. The board of medical examiners shall issue a limited and temporary license to an applicant who has not been examined as required by section 453-4, and against whom no disciplinary proceedings are pending in any state or territory, if the applicant is otherwise qualified to be examined, and upon determination that:

- (1) There is an absence or a shortage of licensed physicians or osteopathic physicians in a particular locality, and that the applicant has been duly licensed as a physician or osteopathic physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall permit the practice of medicine and surgery by the applicant only in the particular locality, and no other, as shall be set forth in the license issued to the applicant. The license shall be valid only for a period of eighteen months from the date of issuance. The board shall establish guidelines to determine a locality with an absence or shortage of physicians[-] or osteopathic physicians. For this purpose, the board may consider a locality to have an absence or shortage of physicians or osteopathic physicians if the absence or shortage results from the temporary loss of a physician[-] or osteopathic physician. In designating a locality with an absence or shortage of physicians[-] or osteopathic physicians, the board shall not delegate its authority to a private organization;
- (2) The applicant is to be employed by an agency or department of the state or county government, and that the applicant has been duly licensed as a physician or osteopathic physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall only be valid for the practice of medicine and surgery while the applicant is in the employ of [such] the governmental agency or department and in no case shall be used to provide private patient care for a fee. A license issued under this paragraph may be renewed from year to year;
- (3) The applicant would practice medicine and surgery only while under the direction of a physician or osteopathic physician regularly licensed

in the State other than as permitted by this section, and that the applicant intends to take the regular licensing examination conducted by the board within the next eighteen months. A limited and temporary license issued under this paragraph shall be valid for no more than eighteen months from the date of issuance, unless otherwise extended at the discretion of the board of medical examiners; provided that this discretionary extension shall not exceed a period of six months beyond the original expiration date of the limited and temporary license;

- (4) The applicant has been appointed as a resident or accepted for specialty training in a health care facility or organized ambulatory health care facility as defined in section 323D-2 or a hospital approved by the board, and that the applicant shall be limited in the practice of medicine and surgery to the extent required by the duties of the applicant's position or by the program of training while at the health care facility, organized ambulatory health care facility, or hospital. The license shall be valid during the period in which the applicant remains as a resident in training, and may be renewed from year to year during the period; or
- (5) A public emergency exists, and that the applicant has been duly licensed as a physician or osteopathic physician by written examination under the laws of another state or territory of the United States. A limited and temporary license issued hereunder shall only be valid for the period of [~~such~~] the public emergency.

Nothing herein requires the registration or licensing hereunder of nurses, or other similar persons, acting under the direction and control of a licensed physician[-] or osteopathic physician."

SECTION 5. Section 453-3.2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The board may issue an educational teaching license to a physician or osteopathic physician who is not licensed in this State and who is invited by the chief of service of a clinical department of a hospital to provide and promote professional education for students, interns, residents, fellows, [~~and~~] doctors of medicine, and doctors of osteopathic medicine in this State. In no case shall an educational teaching license issued hereunder be valid for more than a period of twelve months from the date of issuance of the license.

(b) To receive an educational teaching license, the applicant shall:

- (1) Complete an application as prescribed by the board, which shall include a summary of the applicant's medical, educational, and professional background;
- (2) Provide proof that the applicant is licensed as a physician or osteopathic physician in another state or country and the license is current and in good standing;
- (3) Submit a letter with the application signed by the chief of service of a clinical department of a hospital attesting that the chief of service is a licensed physician or osteopathic physician of this State and is requesting to sponsor and monitor the applicant while the person is engaged in educational or teaching activities for the hospital under an educational teaching license; and
- (4) Pay all applicable fees."

SECTION 6. Section 453-3.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The board may issue a limited and temporary license to a physician or osteopathic physician to maintain patient services for the purpose of substituting for

another physician or osteopathic physician licensed in this State to enable specialized training at an out-of-state fully accredited medical teaching institution; provided that the out-of-state physician~~[-]~~ or osteopathic physician:

- (1) Is board certified by the American Board of Medical Specialties or Bureau of Osteopathic Specialties in the subspecialty in which the Hawaii physician or osteopathic physician is seeking training;
- (2) Is a member of the teaching faculty of the accredited medical teaching institution;
- (3) Has an unrestricted license in another state;
- (4) Has been invited by the chief of a clinical department of a hospital; and
- (5) Has been examined and approved by the hospital's credential process.

The limited and temporary license issued under this section shall expire upon notification of the board by the Hawaii-licensed physician or osteopathic physician that the physician or osteopathic physician has resumed the physician's or osteopathic physician's practice in this State. Licenses and extensions of licenses issued under this section to an individual shall not be valid for more than nine months during any consecutive twenty-four month period.

(b) The chief of the clinical department in which the out-of-state physician or osteopathic physician will practice shall submit a letter to the board ~~[which]~~ that shall include, without limitation, the following:

- (1) Identification and documentation of unrestricted license for the applicant for the specialty training license;
- (2) A statement that the hospital is sponsoring the applicant, and shall be responsible for monitoring the individual physician or osteopathic physician during the period of the temporary license;
- (3) Verification of the start and end dates for the requested temporary license; and
- (4) Verification that the chief of the clinical department is a licensed physician or osteopathic physician of this State."

SECTION 7. Section 453-4, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

"(b) Before any applicant shall be eligible for licensure, the applicant shall furnish proof satisfactory to the board that:

- (1) The applicant is of demonstrated competence and professional knowledge; and
- (2) The applicant is a graduate of:
  - (A) A medical school or college whose program leading to the M.D. degree is accredited by the Liaison Committee on Medical Education~~[-]~~ or whose program leading to the D.O. degree is approved by the American Osteopathic Association Commission on Osteopathic College Accreditation, and has served a residency of at least one year in a program ~~[which]~~ that has been accredited for the training of resident physicians or osteopathic physicians by the Accreditation Council for Graduate Medical Education~~[-]~~ or the American Osteopathic Association, respectively, or a residency of at least one year in a program in Canada ~~[which]~~ that has been accredited for the training of resident physicians by the Royal College of Physicians and Surgeons of Canada, or the College of Family Physicians of Canada; or
  - (B) A foreign medical school and has had at least two years of residency in a program accredited by the Accreditation Council for Graduate Medical Education~~[-]~~ or the American Osteopathic As-

sociation, or has had at least two years of residency in a program in Canada that has been accredited for the training of resident physicians by the Royal College of Physicians and Surgeons of Canada, or by the College of Family Physicians of Canada; and:

- (i) Holds the national certificate of the Educational Commission for Foreign Medical Graduates, or its successor, or for applicants with residency training in Canada, has passed with scores deemed satisfactory by the board, the Medical Council of Canada Evaluating Examination, or its successor; or
- (ii) Holds the certificate of the Fifth Pathway Program of the American Medical Association;

provided that for a period of two years after June 26, 2004, the requirements of subsection (b)(2)(B)(i) and (ii) shall not apply to any applicant who has had four years of residency in a program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association and who has passed, with scores deemed satisfactory by the board, the Special Purpose Examination (SPEX).

(c) Applicants who have passed, with scores deemed satisfactory by the board, the National Board of Medical Examiners examination (NBME), the Federation Licensing Examination (FLEX), the United States Medical Licensing Examination (USMLE), or a combination of these examinations as approved by the board, or the National Board of Osteopathic Medical Examiners examination (NBOME), the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA), or the Medical Council of Canada Qualifying Examination (MCCQE), and who meet the requirements of subsection (b) shall be licensed without the necessity of any further examination; provided that with respect to any applicant, the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service or attending physicians or osteopathic physicians who have been associated with an applicant, or chief residents on a service who have been associated with an applicant during the applicant's training or practice, to be used by the board in assessing the applicant's qualifications to practice medicine.

(d) Applicants who are licensed in another state by virtue of having passed a state-produced examination may qualify for licensure if they have passed the Special Purpose Examination (SPEX) or the Comprehensive Osteopathic Medical Variable-Purpose Examination – USA (COMVEX-USA) and meet the requirements of subsection (b); provided that the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service [øf], attending physicians, or osteopathic physicians who have been associated with an applicant, or chief residents on a service who have been associated with an applicant during the applicant's training or practice, to be used by the board in assessing the applicant's qualifications to practice medicine.”

SECTION 8. Section 453-5.3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The board of medical examiners shall require each person practicing medicine under the supervision of a physician[;] or osteopathic physician, other than a person licensed under section 453-3, to be licensed as a physician assistant. A person who is trained to do only a very limited number of diagnostic or therapeutic procedures under the direction of a physician or osteopathic physician shall not be deemed a practitioner of medicine or osteopathy and therefore does not require licensure under this section.”



2. By amending subsections (d), (e), and (f) to read:

“(d) The board shall approve temporary licensure of an applicant under this section. The applicant shall have graduated from a board approved training program within twelve months of the date of application and never taken a national certifying examination approved by the board but otherwise ~~meet~~ meets the requirements of this section. The applicant shall file a complete application with the board and pay all required fees. If the applicant fails to apply for, or to take, the first examination scheduled by the board following the issuance of the temporary license, fails to pass the examination, or fails to receive licensure, all privileges under this section shall automatically cease upon written notification sent to the applicant by the board. A temporary license shall be issued only once to each person.

(e) Prior to practicing under temporary licensure, holders of temporary licenses shall notify the board in writing of any and all supervising physicians or osteopathic physicians under whom they will be performing services.

(f) The board shall establish the degree of supervision required by the supervising physician or osteopathic physician when a physician assistant performs a service within the practice of medicine. A physician or osteopathic physician who does not supervise a physician assistant’s services at the degree required by the board shall be deemed to have engaged in professional misconduct.”

SECTION 9. Section 453-6, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) Every physician or surgeon holding a license under this chapter shall renew the license with the board no later than January 31<sup>[;]</sup> of each even numbered year<sup>[;]</sup>. Every osteopathic physician or surgeon holding a license previously issued under chapter 460 and this chapter shall renew the license with the board no later than June 30 of each even-numbered year. Every physician, osteopathic physician, or surgeon shall pay a renewal fee<sup>[;]</sup> and comply with the category 1 or 1A continuing medical education requirements provided in rules adopted by the board.

(c) A physician, osteopathic physician, or surgeon shall meet the category 1 or 1A continuing medical education requirements by obtaining credit hours in a category 1 or 1A continuing medical education program accredited by the American Medical Association or the American Osteopathic Association or in other approved category 1 or 1A continuing medical education as provided in the board’s rules. To determine compliance, the board may conduct a random audit. A physician, osteopathic physician, or surgeon selected for audit shall be notified by the board. Within sixty days of notification, the physician, osteopathic physician, or surgeon shall provide to the board documentation to verify compliance with the category 1 or 1A continuing medical education requirements.

(d) Failure to renew, pay the renewal fee, and, in the case of audited physicians ~~[or]~~, osteopathic physicians, or surgeons, provide documentation of compliance shall constitute a forfeiture of license, which may be restored only upon the submission of written application therefor, payment to the board of a restoration fee, and, in the case of audited physicians, osteopathic physicians, and surgeons, documentation of compliance.”

SECTION 10. Section 453-7.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of commerce and consumer affairs shall review each complaint and information received under sections 92-17, 329-44, 453-8.7, 663-1.7, 671-5, and 671-15. The department shall investigate the complaint or information if it appears that the physician or osteopathic physician who is the subject of the complaint or information has violated this chapter. If the department determines that the physician or osteopathic physician has violated this chapter, the department shall

present the results of its investigation to the board of medical examiners for appropriate disciplinary proceedings.”

SECTION 11. Section 453-8, Hawaii Revised Statutes, is amended to read as follows:

**“§453-8 Revocation, limitation, suspension, or denial of licenses.** (a) In addition to any other actions authorized by law, any license to practice medicine and surgery may be revoked, limited, or suspended by the board at any time in a proceeding before the board, or may be denied, for any cause authorized by law, including but not limited to the following:

- (1) Procuring, or aiding or abetting in procuring, a criminal abortion;
- (2) Employing any person to solicit patients for one’s self;
- (3) Engaging in false, fraudulent, or deceptive advertising, including but not limited to:
  - (A) Making excessive claims of expertise in one or more medical specialty fields;
  - (B) Assuring a permanent cure for an incurable disease; or
  - (C) Making any untruthful and improbable statement in advertising one’s medical or surgical practice or business;
- (4) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- (5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (6) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;
- (7) Professional misconduct, hazardous negligence causing bodily injury to another, or manifest incapacity in the practice of medicine, osteopathy, or surgery;
- (8) Incompetence or multiple instances of negligence, including but not limited to the consistent use of medical service, which is inappropriate or unnecessary;
- (9) Conduct or practice contrary to recognized standards of ethics of the medical profession as adopted by the Hawaii Medical Association [¶], the American Medical Association[;], the Hawaii Association of Osteopathic Physicians and Surgeons, or the American Osteopathic Association;
- (10) Violation of the conditions or limitations upon which a limited or temporary license is issued;
- (11) Revocation, suspension, or other disciplinary action by another state or federal agency of a license, certificate, or medical privilege for reasons as provided in this section;
- (12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician[;] or osteopathic physician, notwithstanding any statutory provision to the contrary;
- (13) Violation of chapter 329, the uniform controlled substances act, or any rule adopted thereunder except as provided in section 329-122;
- (14) Failure to report to the board, in writing, any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days after the disciplinary decision is issued; or

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- (15) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement or omission of fact.

(b) If disciplinary action related to the practice of medicine has been taken against the applicant in any jurisdiction that would constitute a violation under this section, or if the applicant reveals a physical or mental condition that would constitute a violation under this section, then the board may impose one or more of the following requirements as a condition for licensure:

- (1) Physical and mental evaluation of the applicant by a licensed physician or osteopathic physician approved by the board;
- (2) Probation, including [sueh] conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed physicians, osteopathic physicians, or surgeons;
- (3) Limitation of the license by restricting the fields of practice in which the licensee may engage;
- (4) Further education or training or proof of performance competency; and
- (5) Limitation of the medical practice of the licensee in any reasonable manner to assure the safety and welfare of the consuming public.”

SECTION 12. Section 453-8.1, Hawaii Revised Statutes, is amended to read as follows:

“**§453-8.1 Voluntary limitation of license.** A physician, osteopathic physician, or surgeon may request, in writing, that the board limit the individual’s license to practice. The board may grant the request and may impose conditions on the limited license. The board shall determine whether and when [sueh] the limitation shall be removed.”

SECTION 13. Section 453-8.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other actions authorized by law, in disciplining a licensee in a proceeding held in conformity with chapter 91, the board may impose one or more of the following sanctions:

- (1) Place the licensee on probation, including [sueh] conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed physicians, osteopathic physicians, or surgeons;
- (2) Suspend the license;
- (3) Revoke the license;
- (4) Limit the license by restricting the fields of practice in which the licensee may engage;
- (5) Fine the licensee, including assessment against the licensee of the costs of the disciplinary proceedings. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be not less than \$500 and not more than \$5,000 for each violation, exclusive of the costs of the disciplinary proceedings;
- (6) Require further education or training, or require proof of performance competency; or
- (7) Censure or reprimand.”

SECTION 14. Section 453-8.7, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) Every physician or osteopathic physician licensed pursuant to this chapter who does not possess professional liability insurance shall report any settlement

or arbitration award of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services. The report shall be submitted to the department of commerce and consumer affairs within thirty days after any written settlement agreement has been reduced to writing and signed by all the parties thereto or thirty days after service of the arbitration award on the parties.

(b) Failure of a physician or osteopathic physician to comply with the provisions of this section is an offense punishable by a fine of not less than \$100 for the first offense, \$250 to \$500 for the second offense, and \$500 to \$1,000 for subsequent offenses.

(c) The clerks of the respective courts of this State shall report to the department any judgment or other determination of the court, which adjudges or finds that a physician or osteopathic physician is liable criminally or civilly for any death or personal injury caused by the physician's or osteopathic physician's professional negligence, error, or omission in the practice of the physician's or osteopathic physician's profession, or rendering of unauthorized professional services. The report shall be submitted to the department within ten days after the judgment is entered by the court."

SECTION 15. Section 453-10, Hawaii Revised Statutes, is amended to read as follows:

**"§453-10 Witnesses in such proceeding.** In any [such] proceeding the board may subpoena, administer oaths to, and examine witnesses on any relevant matter in [such] the proceeding. The board may subpoena physicians, osteopathic physicians, or surgeons as specialists, on the recommendation of the appropriate specialist society. The board may order a mental, physical, or medical competency examination to determine the capacity or ability of a licensee to continue to practice medicine or surgery and order appropriate specialist societies to conduct [such] examinations. The person whose license is sought in [such] the proceeding to be revoked, limited, or suspended shall be entitled to require the board or any member thereof to subpoena and to administer oaths to any witness [~~or witnesses~~] who may be able to present evidence relevant in [such] the proceeding, and shall be entitled to examine any [such] witness [~~and any other witness~~] in [such] the proceeding. The circuit court of the circuit in which the proceeding is held may enforce by proper proceeding the attendance and testimony of witnesses in [such] the proceeding."

SECTION 16. Section 453-14, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:

**"§453-14 Duty of physician, osteopathic physician, surgeon, hospital, clinic, etc., to report wounds.** (a) Every physician, osteopathic physician, and surgeon attending or treating a case of knife wound, bullet wound, gunshot wound, powder burn, or any injury that would seriously maim, produce death, or has rendered the injured person unconscious, caused by the use of violence or sustained in a suspicious or unusual manner or in motor vehicle collisions resulting in serious injury or death, or, whenever the case is treated in a hospital, clinic, or other institution, the manager, superintendent, or person in charge thereof, shall report the case or provide requested information to the chief of police of the county within which the person was attended or treated, giving the name of the injured person, description of the nature, type, and extent of the injury, together with other pertinent information that may be of use to the chief of police. As used herein, the term "chief of police" means the chief of police of each county and any of the chief's authorized subordinates."

## ACT 5

SECTION 17. Section 453-15, Hawaii Revised Statutes, is amended to read as follows:

**“§453-15 Who shall give consent to a postmortem examination.** A pathologist or any licensed physician, osteopathic physician, or surgeon may conduct a postmortem examination when written consent thereto is given by whoever of the following assumes custody of the body for purposes of burial: father, mother, husband, wife, reciprocal beneficiary, child, guardian, next of kin, or, in the absence of any of the foregoing, a friend or person, including a governmental agency, charged by law with the responsibility for the burial. If two or more [such] persons assume custody of the body, the consent of one of them is sufficient. The consent shall include the consent to the retention by the pathologist or licensed physician, osteopathic physician, or surgeon who conducts the postmortem examination of tissues, including fetal material, of the body removed at the time of the postmortem examination to be used for necessary or advisable scientific investigation, including research, teaching, and therapeutic purposes.”

SECTION 18. Section 453-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No abortion shall be performed in this State unless:

- (1) The abortion is performed by a licensed physician or surgeon, or by a licensed osteopathic physician and surgeon; and
- (2) The abortion is performed in a hospital licensed by the department of health or operated by the federal government or an agency thereof, or in a clinic or physician’s or osteopathic physician’s office.”

SECTION 19. Section 453-31, Hawaii Revised Statutes, is amended to read as follows:

**“§453-31 Emergency ambulance service personnel.** The practice of any emergency medical services by any individual employed by an emergency ambulance service who is not licensed under this chapter or under chapter 457 shall be subject to certification under this part. In the event of any conflict between this part and any rules adopted under section 453-2, [~~the provisions of~~] this part shall control with regard to emergency ambulance service personnel.

The board of medical examiners shall define the scope of the practice of emergency medical services, different levels of the practice, and degree of supervision required of a supervising physician or osteopathic physician when a person certified under this part provides services within the practice of medicine.”

SECTION 20. Section 453-32.6, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§453-32.6[H] Delegation to committee of practicing emergency physicians or osteopathic physicians and emergency ambulance personnel.** The board of medical examiners shall establish a committee consisting of practicing emergency physicians or osteopathic physicians and emergency ambulance personnel to assist the board in the performance of duties under this part.

The board, by written order, may delegate to the committee any of its powers and duties for administration of this part, except that the board shall not delegate any authority to adopt, amend, or repeal rules, take disciplinary action against a certificate holder, or restore a certificate which has been revoked.”

SECTION 21. Chapter 460, Hawaii Revised Statutes, is repealed.

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect upon its approval; provided that the continuing medical education requirements for osteopathic physicians shall take effect with the June 2010 license renewal period.

(Approved April 3, 2008.)

## ACT 6

H.B. NO. 2138

A Bill for an Act Relating to Caregiver Recognition Day.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 8, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§8- Caregiver Recognition Day.** The first Saturday of November shall be known and designated as “Caregiver Recognition Day”, in recognition of the very significant role that caregivers play in support of Hawaii’s elderly and persons with disabilities. This day is not and shall not be construed as a state holiday.

As used in this section, “caregiver” means any person who has undertaken the care, custody, or physical assistance of an elderly or disabled person, including but not limited to compensated or uncompensated family members or other relatives, or any person who has the desire, or a legal, or contractual duty to care for the health, safety, and welfare of an elderly or disabled person, including owners, operators, employees, or staff of long-term care facilities and community home-based institutions.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved April 4, 2008.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 7

H.B. NO. 3080

A Bill for an Act Relating to Property of Public Utilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is vital to the State’s well-being that public utilities ensure that the property they use in the provision of services to customers is maintained at a certain prescribed level. The public utilities commission, the entity charged by the legislature with responsibility over the condition of public utilities and their property, must keep a watchful eye so that the public interest in steady, reliable utility service is served and preserved. Presently, state law mandates that a public utility seek and secure an order from the public utilities commission

## ACT 7

prior to the disposal or encumbrance of property necessary or useful in performing its duties to the public.

The legislature finds, however, that unusual, exigent circumstances call for a public utility to come to the aid of a customer in a time-sensitive manner. The legislature further finds that these unusual, exigent situations sometimes call for a public utility to transfer, assign, or otherwise dispose of its property to help a customer in distress return to normal operations.

The purpose of this Act is to authorize public utilities to transfer, assign, or otherwise dispose of property, except real property, without prior approval from the public utilities commission to aid a customer whose operations have been disrupted in exigent circumstances.

SECTION 2. Section 269-19, Hawaii Revised Statutes, is amended to read as follows:

**“§269-19 Merger and consolidation of public ~~[utility corporations.]~~ utilities. ~~[No]~~ (a) Except as provided in subsection (b), no public utility ~~[corporation]~~** shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility ~~[corporation]~~ without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

**(b) A public utility, under circumstances that it deems exigent and in its judgment require a response that rapidly restores one of its customers to normal, or near normal, operating status in order to prevent serious disruption of essential public services, or avoid serious risk to public safety, or to mitigate severe economic losses to that customer, may transfer, assign, or otherwise dispose of its property without prior approval from the public utilities commission as required in subsection (a); provided that in so doing:**

- (1) The public utility does not unduly hinder or degrade the public utility’s operation with respect to its services or other customers;**
- (2) The public utility is duly compensated for its property; and**
- (3) The public utility reports in detail to the public utilities commission within thirty days of any such action unless otherwise approved by the public utilities commission for good cause shown.**

**For purposes of this subsection, “property” does not include real property.”**

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 4, 2008.)

## ACT 8

S.B. NO. 2395

A Bill for an Act Relating to Language Access.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 371-32, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§371-32**~~[H]~~ **Definitions.** Whenever used in this part, unless a different meaning clearly appears from the context:

~~“Access or participate”~~ “Access” or “participate” means to be informed of, participate in, and benefit from the services, programs, and activities offered by the State and covered entities.

“Covered entity” means a person or organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services ~~[on behalf of the State.]~~ to the public. It shall not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

“Language” means human speech or the expression of ideas by written characters and includes systems used by nations, people, or other distinct communities.

“Limited English proficient” means individuals who, on account of national origin, do not speak English as their primary language and who identify themselves ~~[as]~~ having a limited ability to read, write, speak, or understand the English language.

“Oral language services” means the free provision of oral information necessary to enable limited English proficient persons to access or participate in services, programs, or activities ~~[-]~~ of a state agency or covered entity.

“Purchase-of-service contract” means any and all types of formal written agreements, regardless of what they may be called, between the State and any person, to purchase or otherwise acquire any service for the purpose of rendering services to the public.

“State” or “state agency” means the executive, legislative, ~~[and]~~ or judicial branches of state government, including departments, offices, commissions, boards, or other agencies within the executive, legislative, or judicial branches.

“Vital documents”~~[-]~~:

- (1) ~~Means~~ means printed documents that provide important information necessary to access or participate in services, programs, and activities~~[-]~~; ~~and~~
- (2) ~~Includes but is~~ of a state agency or covered entity, including, but not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services.

“Written language services” means the free provision of written information necessary to enable limited English proficient persons to access or participate in services, programs, or activities of a state agency or covered entity.”

SECTION 2. Section 371-37, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the language access advisory council within the department of labor and industrial relations for administrative purposes. The council shall consist of the following members to be appointed by the governor:

- (1) One representative from the state government;
- (2) One representative from a covered entity;



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- (3) One bilingual case management worker, or an individual who is or has been employed by a state-funded immigrant service agency or program;
- (4) One representative of an advocacy organization that provides services to limited English proficient persons;
- (5) One member from the limited English proficient population who has an interest in the provision of oral language services;
- (6) One representative of the University of Hawaii department of language and linguistics who provides professional training in interpretation and translation;
- (7) One representative of a Hawaiian language advocacy organization;
- (8) One representative of a professional interpreter’s organization;
- (9) One representative of a bilingual referral service or program;
- (10) One representative residing in the county of Hawaii who has an interest in language access;
- (11) One representative residing in the county of Kauai who has an interest in language access;
- (12) One representative residing in the county of Maui who has an interest in language access;
- (13) One representative residing in the city and county of Honolulu who has an interest in language access;
- ~~[(40)]~~ (14) The executive director of the Hawaii civil rights commission or authorized representative[; and], as ex-officio member;
- ~~[(41)]~~ (15) One representative from the disability and communication access board, as an ex-officio member; and
- (16) The executive director, as ex-officio member.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 8, 2008.)

ACT 9

H.B. NO. 2169

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this bill is to change the name of the “board of medical examiners”, established pursuant to section 453-5, Hawaii Revised Statutes, to the “Hawaii medical board”.

SECTION 2. Section 453-5, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

**“§453-5 [~~Board of medical examiners;~~ Hawaii medical board; appointment, removal, qualifications. (a) For the purpose of carrying out this chapter, the governor shall appoint a [~~board of medical examiners;~~ Hawaii medical board whose duty it shall be to examine all applicants for license to practice medicine or surgery. As used in this chapter, “board” means the [~~board of medical examiners;~~ Hawaii medical board.**

The board shall consist of eleven persons, seven of whom shall be physicians or surgeons licensed under the laws of the State, two of whom shall be osteopathic physicians licensed under the laws of the State, and two of whom shall be lay members appointed from the public at large. Of the nine members who are physicians, surgeons, or osteopathic physicians, at least five shall be appointed from the city and county of Honolulu and at least one shall be appointed from each of the other counties. Medical societies in the various counties may conduct elections periodically but no less frequently than every two years to determine nominees for the board to be submitted to the governor. In making appointments, the governor may consider recommendations submitted by the medical societies and the public at large. Each member shall serve until a successor is appointed and qualified.”

SECTION 3. The revisor of statutes shall replace the term “board of medical examiners” or like term whenever it may appear in the Hawaii Revised Statutes, with the term “Hawaii medical board”.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 11, 2008.)

## ACT 10

S.B. NO. 45

A Bill for an Act Relating to Government Operations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 353-61, Hawaii Revised Statutes, is amended to read as follows:

**“§353-61 Hawaii paroling authority; appointment; tenure; qualifications.**

Members of the paroling authority shall be nominated by a panel composed of the chief justice of the Hawaii supreme court, the director, the president of the Hawaii Criminal Justice Association, the president of the bar association of Hawaii, a representative designated by the head of the Interfaith Alliance Hawaii, a member from the general public to be appointed by the governor, and the president of the Hawaii chapter of the National Association of Social Workers. The panel shall submit to the governor the names of not less than three persons, designated as the nominees, for chairperson or as a member, for each vacancy. The requirement for nomination by the panel established under this section shall only apply to a nominee’s nomination by the governor to an initial term on the paroling authority and not to any subsequent consecutive term of a sitting paroling authority member or chairperson whose initial appointment to office was made pursuant to a nomination by the panel. The governor shall appoint, in the manner prescribed by section 26-34, a paroling authority to be known as the Hawaii paroling authority, to consist of three members one of whom shall be designated chairperson. Appointments shall be made for terms of four years, commencing from the date of expiration of the last preceding term. Any vacancy in an unexpired term shall be filled by appointment for the remainder of the unexpired term. Nominees to the authority shall be selected on the basis of their qualifications to make decisions that will be compatible with the welfare of the community and of individual offenders, including their background and ability for appraisal of offenders and the circumstances under which offenses were committed.”

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**SECTION 2.** Any person that:

- (1) Is currently serving as a member or chairperson of the Hawaii paroling authority; and
- (2) Has previously been nominated for service on the Hawaii paroling authority pursuant to nomination by a panel established under section 353-61, Hawaii Revised Statutes,

is deemed qualified to be nominated to serve for a subsequent term of office on the Hawaii paroling authority and shall not be subject to any re-nomination by a panel pursuant to section 353-61, Hawaii Revised Statutes; provided that this Act shall not be construed to affect the application of term limits established under section 26-34, Hawaii Revised Statutes.

**SECTION 3.** Any person that:

- (1) Is currently serving as a member or chairperson of the Hawaii paroling authority;
- (2) Has previously been nominated for service on the Hawaii paroling authority pursuant to a nomination by a panel established under section 353-61, Hawaii Revised Statutes; and
- (3) Has been confirmed by the senate to serve on the Hawaii paroling authority after June 30, 2005, and prior to the effective date of this Act,

is deemed confirmed and duly authorized to serve on the Hawaii paroling authority for the position and term to which appointed.

**SECTION 4.** New statutory material is underscored.

**SECTION 5.** This Act shall take effect on April 30, 2008.

(Approved April 11, 2008.)

**ACT 11**

H.B. NO. 2656

A Bill for an Act Relating to Campaign Contributions.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature has previously acknowledged that there are many individuals who have significant personal, emotional, and economic relationships with other individuals yet these couples are prohibited from legally marrying. In response to this, the legislature has created a legal relationship known as a reciprocal beneficiary relationship to assist those couples in providing for one another. The legislature finds that there are individuals who are in reciprocal beneficiary relationships who want to campaign for elected office and may wish to rely on campaign contributions from their reciprocal beneficiary. The legislature also finds that part of the intent of the campaign contribution laws was to provide special exemptions for immediate family members when providing campaign contributions. The legislature further finds that reciprocal beneficiaries should be considered immediate family members for the purposes of campaign contribution laws.

The purpose of this measure is to amend the definition of "immediate family member" in section 11-191, Hawaii Revised Statutes, to include reciprocal beneficiaries.

**SECTION 2.** Section 11-191, Hawaii Revised Statutes, is amended by amending the definition of "immediate family" to read as follows:

““Immediate family” means a candidate’s spouse[;] or reciprocal beneficiary, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses or reciprocal beneficiaries of such persons. For the purposes of this part, “reciprocal beneficiaries” shall have the same meaning as in section 572C-3.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 14, 2008.)

## ACT 12

H.B. NO. 2428

A Bill for an Act Relating to Highways.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 264-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All roads, alleys, streets, ways, lanes, bikeways, [~~and~~] bridges, and all other real property highway related interests in the State, opened, laid out, [~~or~~] subdivided, consolidated, and acquired and built by the government are declared to be public highways. Public highways are of two types:

- (1) State highways, which are those lands, interests, or other real property rights, as defined above, having an alignment or possession of a real property highway related interest as established by law, subdivided and acquired in accordance with policies and procedures of the department of transportation, separate and exempt from any county subdivision ordinances, and all those under the jurisdiction of the department of transportation; and
- (2) County highways, which are all other public highways.”

SECTION 2. Section 264-23, Hawaii Revised Statutes, is amended to read as follows:

“**§264-23 Duties of director.** The director of transportation shall:

- (1) Select, designate, acquire, or lay out, in compliance with the requirements of the Federal Highway Act, a system or systems of highways in the State, upon which federal-aid funds may or are to be expended, together with state or county funds, or both[-];
- (2) Alter, modify, [~~or~~] revise, or acquire new or additional real property interests in support of the system or systems or any portion or portions thereof, to such extent as may be required by the administrator under the Federal Highway Act[;]; provided the alteration, modification, [~~or~~] revision, or acquisition of new or additional real property interests is not forbidden by the laws of the State[-] and exempt from any county subdivision ordinances;
- (3) Prepare, or cause to be prepared, and submit for approval to the administrator, [~~conformably to~~] in conformity with the Federal Highway Act, project statements setting forth proposed construction or reconstruction

of any highway or portion thereof upon which federal-aid funds are proposed or desired to be expended in connection with local funds; and upon approval of any of ~~[such] the~~ project statements, ~~[conformably to]~~ in conformity with the Federal Highway Act, prepare or cause to be prepared, and submit for approval to the administrator, ~~[such] the~~ surveys, plans, specifications, and estimates for the project embraced by ~~[such] the~~ statement, or any portion thereof, ~~[as] that~~ the administrator may require~~[-]~~:

- (4) Subject to the approval of the administrator, and ~~[conformably to]~~ in conformity with the Federal Highway Act, on behalf of the State, undertake, and enter into contracts for, the construction of the federal-aid projects, and the expenditure of federal-aid funds, together with local funds, upon the projects, and supervise the construction of the projects~~[-]~~; and
- (5) Undertake and perform any and all acts ~~[which shall be]~~ that are necessary or proper for the purpose of complying with the Federal Highway Act and securing the benefits of federal-aid for highways which the State is eligible to receive under the Federal Highway Act.

The director may designate in writing a qualified subordinate who may sign vouchers, make routine reports, and perform ~~[such] any~~ other routine duties ~~[as] that~~ the director may deem necessary to delegate. All acts of the subordinate shall be performed under the direction of the director, who shall be responsible therefor.”

SECTION 3. Section 264-29, Hawaii Revised Statutes, is amended to read as follows:

**“§264-29 Council’s authority.** The council of a county ~~[may]~~, by resolution adopted in the manner required by law relating to resolutions involving the expenditure of public money, may place under the control and at the disposal of the director of transportation any funds of the county expendable for construction or reconstruction of highways within the county for the purpose of securing or attempting to secure federal aid for the construction or reconstruction, as a federal-aid project, of any highway or portion thereof eligible for federal aid within the county. The council ~~[shall]~~, whenever an appropriation for the construction of any highway or portion thereof lying within the system or systems of highways eligible for federal aid, as designated from time to time by the governor and the administrator under the provisions of the Federal Highway Act, as amended, is made by it, by resolution shall place ~~[such] the~~ appropriation under the control of the director for the purpose of constructing ~~[such] the~~ highway or portion thereof as a federal-aid project.

The council, by the resolution, shall also grant the director of transportation exemptions from county subdivision requirements in order to expedite and make efficient the expenditure of public money.”

SECTION 4. Section 264-43, Hawaii Revised Statutes, is amended to read as follows:

**“§264-43 Responsibility.** The department of transportation shall acquire, subdivide, consolidate, construct, maintain, and administer all highways comprising the state highway system~~[-]~~ in accordance with all state and federal laws and exempt from county subdivision ordinances.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 14, 2008.)

## ACT 13

S.B. NO. 1809

A Bill for an Act Relating to Condominiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514B-121, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the unit owners as shown in the association’s record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting at the association’s expense in accordance with the requirements of the bylaws and of this part[-]; provided further that a special meeting based upon a petition to the secretary or managing agent shall be set no later than sixty days from receipt of the petition.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 15, 2008.)

## ACT 14

H.B. NO. 3325

A Bill for an Act Relating to the Uniform Land Sales Practices Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 484-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider’s subdivision, this chapter shall not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser’s own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
- (3) Where the division of lands is a leasehold agricultural lot within state agricultural districts on which no dwelling structures are constructed as provided in section 205-4.5(e);

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- (4) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly ~~[[or]]~~ indirectly, transferred to or otherwise imposed upon the purchaser;
- (5) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale;
- (6) Pursuant to court order;
- (7) By any government or government agency;
- (8) As cemetery lots or interests; ~~[or]~~
- (9) Registered as a condominium property regime pursuant to chapter 514B~~[-]~~; or
- (10) Registered as a time share plan pursuant to chapter 514E.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 15, 2008.)

**ACT 15**

H.B. NO. 3343

A Bill for an Act Relating to Filipino-American History Month.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the writings and teachings of American history have often overlooked the historical role of Asian-Americans, including the role of Filipino-Americans, whose heritage spans a colonial, political, economic, and cultural relationship with the United States. The legislature also finds that the earliest documented presence of Filipinos in America was in 1587 in California and a settlement on the bayous of Louisiana in 1763, when seamen, later called Manilamen, jumped ship during the Spanish galleon trade era.

Subsequent waves of migration followed and today Filipino-Americans continue to make a lasting impact on the history and heritage of Hawaii and the United States. The legislature further finds that there have also been critical economic, cultural, social, and other notable contributions by Filipino-Americans to the development of United States history. The legislature further finds that the prominence of Hawaii’s Filipino and Filipino-American population warrants an official commemoration of the history and heritage of Filipino-Americans.

The purpose of this Act is to designate the month of October as Filipino-American History Month to commemorate the contributions of Filipino-Americans to Hawaii and the United States.

SECTION 2. Chapter 8, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§8- Filipino-American History Month.** The month of October shall be known and designated as “Filipino-American History Month.” The month of October shall commemorate the contributions of Filipino-Americans to the history and

heritage of Hawaii and the United States. This month is not and shall not be construed as a state holiday.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 15, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 16**

S.B. NO. 2399

A Bill for an Act Relating to Statutory Revision: Amending or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 10-27, Hawaii Revised Statutes, is amended to read as follows:

“**[H]§10-27[H] Covenants in resolution authorizing revenue bonds.** Any resolution or resolutions authorizing the issuance of revenue bonds under this part may contain covenants as to:

- (1) The purpose or purposes to which the proceeds of the sale of revenue bonds may be applied; the use and disposition of such proceeds; the investment thereof pending such use and disposition; and the use and disposition of the income from such investment;
- (2) The use and disposition of the revenue of the office project or projects for the construction or maintenance of which the revenue bonds are issued are to be included; the use and disposition of the revenue of all office projects, and of the revenues of the office, including the creation and maintenance of reserves; the investment of such revenues and of the moneys in such reserves; and the use and disposition of the income from such investments;
- (3) The minimum amount of revenues to be produced by the office projects or the office, over and above the amount required to be produced by the first sentence and paragraphs (1) to (3) of section 10-31;
- (4) The use and disposition of the proceeds of the sale of any office project, or part thereof;
- (5) The construction and maintenance of any office project other than the office project or projects for the construction or maintenance of which revenue bonds are issued;
- (6) The issuance of other or additional revenue bonds payable either from the revenue of the office project or projects for the construction or maintenance of which the revenue bonds are issued or the revenue of the office or payable from the revenue of other office projects;
- (7) The maintenance of the office project, including the creation by the board of such supervisory positions, which shall not be subject to chapter 76, as are necessary to facilitate the issuance of revenue bonds by ensuring the adequacy of revenues;



- (8) The insurance to be carried on office projects and the use and disposition of insurance moneys;
- (9) Books of account and inspection and audit thereof;
- (10) A procedure by which the terms and conditions of the bond resolution or indenture may be subsequently amended or modified with the consent of the board, the vote or written assent of the holders of bonds or any proportion of the ~~[holder,]~~ holders, or any trustee thereof; and
- (11) The terms and conditions upon which the holders of bonds evidencing the obligation to repay loans, or any proportion of the holders, or any trustee thereof, shall be entitled to the appointment of a receiver by any court of competent jurisdiction, which court shall have jurisdiction in such proceedings, and which receiver may enter and take possession of the office project or projects, maintain them, prescribe rents, fees, and charges, and collect, receive, and apply all revenue thereafter arising therefrom in the same manner as the board itself might do, but the receiver shall have no power, nor be granted any power, to utilize, or permit the utilization of, any office project other than in a manner consistent with and in furtherance of the purposes of the office.

This part and any such resolution or resolutions shall be a contract with the holders of bonds issued under this part, and the duties of the board and any such resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.”

SECTION 2. Section 11-191, Hawaii Revised Statutes, is amended by amending the definition of “expenditure” to read as follows:

““Expenditure”:

(1) Means:

- (A) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a nonmonetary contribution for the purpose of:
  - (i) Influencing the nomination for election, or election, of any person seeking nomination for election, or election, to office whether or not the person has filed the person’s nomination paper;
  - (ii) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
  - (iii) Use by any party or committee for the purposes set out in clause (i) or (ii);
- (B) The payment, by any person other than a candidate or committee, of compensation for the personal services of another person that are rendered to the candidate or committee for any of the purposes mentioned in subparagraph (A); or
- (C) The expenditure by a candidate of the candidate’s own funds for the purposes set out in ~~[F]~~subparagraph (A)~~[F]~~.

The term does not include volunteer personal services and voter registration efforts that are not partisan.

- (2) Does not include an individual or committee engaging in internet activities for the purpose of influencing an election if:
  - (A) The individual or committee is uncompensated for internet activities; or

- (B) The individual or committee uses equipment or services for uncompensated internet activities, regardless of who owns the equipment and services.

For purposes of this paragraph, “internet activities” includes sending or forwarding electronic messages; providing a hyperlink or other direct access to another person’s website; blogging; creating, maintaining, or hosting a website; paying a nominal fee for the use of another person’s website; and any other form of communication distributed over the Internet.

For purposes of this paragraph, “equipment and services” includes computers, software, internet domain names, internet service providers, and any other technology that is used to provide access to or use of the Internet.

This paragraph does not apply to any payment for an advertisement other than a nominal fee; the purchase or rental of an e-mail address list made at the direction of a committee; or an e-mail address list that is transferred to a committee.”

SECTION 3. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and ~~[485;]~~ 485A;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;
- (13) By the auditor;
- (14) By the office of ombudsman;
- (15) By the insurance division;
- (16) By the University of Hawaii;
- (17) By the Kahoolawe island reserve commission;
- (18) By the division of consumer advocacy;
- (19) By the office of elections;
- (20) By the campaign spending commission;
- (21) By the Hawaii tourism authority, as provided in section 201B-2.5; or

- (22) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines, to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section.”

SECTION 4. Section 150A-5.3, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§150A-5.3~~]]~~ Inspection, quarantine, and eradication service fee and charge.** There is imposed a fee for the inspection, quarantine, and eradication of invasive species contained in any marine commercial container shipment, foreign or domestic, that is brought into the State. The fee shall be computed on the basis of \$1 for each twenty-foot equivalent unit per container. The department shall collect the fee at the port of disembarkation and deposit the fee into the pest ~~[[~~inspection~~]]~~, quarantine, and eradication fund under section 150A-4.5.”

SECTION 5. Section 237-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) “Wholesaler” or “jobber” applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
- (3) Sales to a licensed producer or cooperative association of materials or commodities that are to be incorporated by the producer or by the cooperative association into a finished or saleable product that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities that are sold by the producer or by the cooperative association;
- (4) Sales to a licensed contractor, of materials or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in such finished work or project in such form as to be perceptible to the senses;
- (5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer’s own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator’s service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any

- amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;
- (6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed or seedstock for producing agricultural and aquacultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural and aquacultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);
- (7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural and aquacultural products; of seedlings and cuttings for producing nursery plants or aquacultural products; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);
- (8) Sales of tangible personal property~~[-]~~ where:  
~~[(A) To a licensed seller engaged in a service business or calling; provided that:~~  
 (i) ~~The property is not consumed or incidental to the performance of the services;~~  
 (ii) ~~There is a resale of the article at the retail rate of four per cent; and~~  
 (iii) ~~The resale of the article is separately charged or billed by the person rendering the services;~~  
~~(B) Where:~~  
 (i) ~~(A) Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling, or upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;~~  
 (ii) ~~(B) The tangible personal property becomes or is used as an identifiable element of the service rendered; and~~  
 (iii) ~~(C) The cost of the tangible personal property does not constitute overhead to the licensed seller;~~  
 the sale shall be subject to section 237-13.3; ~~[or~~  
 (C) ~~Where the taxpayer is subject to both subparagraphs (A) and (B), then the taxpayer shall be taxed under subparagraph (A). Subparagraphs (A) and (C) shall be repealed on January 1, 2006];<sup>1</sup>~~
- (9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;
- (10) Sales of services to a licensed seller engaging in a business or calling whenever:  
 (A) Either:  
 (i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;

- (ii) In the context of a service-to-tangible personal property transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, or preparing tangible personal property to be sold;
  - (iii) In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor; or
  - (iv) In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;
- (B) The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations;
  - (C) The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations;
  - (D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, contractor, or person furnishing transient accommodations for imposition of the tax under this chapter;
  - (E) The gross income of the licensed seller is not subject to a deduction under this chapter or chapter 237D; and
  - (F) The resale of the service, tangible personal property, contracting, or transient accommodations is subject to the tax imposed under this chapter at the highest tax rate.
- Sales subject to this paragraph shall be subject to section 237-13.3;
- (11) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments that are provided to customers by the licensed retail merchant, jobber, or other licensed seller;
  - (12) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller;
  - (13) Sales of amusements subject to taxation under section 237-13(4) to a licensed seller engaging in a business or calling whenever:
    - (A) Either:
      - (i) In the context of an amusement-to-service transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;
      - (ii) In the context of an amusement-to-tangible personal property transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of selling tangible personal property; or

- (iii) In the context of an amusement-to-amusement transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another amusement in the course of the person's amusement business;
- (B) The benefit of the amusement passes to the customer of the licensed seller as an identifiable element of the other service, tangible personal property to be sold, or amusement;
- (C) The cost of the amusement does not constitute overhead to the licensed seller;
- (D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, person furnishing transient accommodations, or person rendering an amusement for imposition of the tax under chapter 237;
- (E) The gross income of the licensed seller is not subject to a deduction under this chapter; and
- (F) The resale of the service, tangible personal property, or amusement is subject to the tax imposed under this chapter at the highest rate.

As used in this paragraph, "amusement" means entertainment provided as part of a show for which there is an admission charge. Sales subject to this paragraph shall be subject to section 237-13.3; and

- (14) Sales by a printer to a publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials."

SECTION 6. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

**"§237-13 Imposition of tax.** There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

- (1) Tax on manufacturers.
  - (A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.
  - (B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.
  - (C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State,

whether in a finished or unfinished condition, or sells the same for delivery to points outside the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department shall determine the basis for assessment, as provided by this paragraph, as follows:

- (i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products;
  - (ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values;
  - (iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce; and
  - (iv) In all cases in which products leave the State in an unfinished condition, the basis for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State.
- (2) Tax on business of selling tangible personal property; producing.
- (A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that insofar as the sale of tangible personal property is a wholesale sale under section 237-4(a)(8)(B), the sale shall be subject to section 237-13.3. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if

sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).

- (B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.
- (C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.
- (D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; provided that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.
- (E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.
- (F) The department, by rule, may require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
  - (i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the addi-



- tional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and
- (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively at wholesale.
- (3) Tax upon contractors.
- (A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business.
  - (B) In computing the tax levied under this paragraph, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A), on:
    - (i) Another taxpayer who is a contractor, as defined in section 237-6;
    - (ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or
    - (iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State;

provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.
  - (C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:
    - (i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and
    - (ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.
  - (D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements the person intended, and for the period of at least one year after completion of the building, structure, or other improvements the person continued to intend to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the

improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.

- (4) Tax upon theaters, amusements, radio broadcasting stations, etc.
- (A) Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business, and in the case of a sale of an amusement at wholesale under section 237-4(a)(13), the tax shall be subject to section 237-13.3.
- (B) The department may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
- (i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and
- (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.
- (5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.
- (6) Tax on service business.
- (A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business.

Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.

- (B) The department may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:
  - (i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and
  - (ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.
- ~~[(C) Where any person engaging or continuing within the State in any service business or calling renders those services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering those services and the ultimate recipient of the benefits of those services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent. Where the taxpayer is subject to both this subparagraph and to the lowest tax rate under subparagraph (A), the taxpayer shall be taxed under this subparagraph. This subparagraph shall be repealed on January 1, 2006.~~
- ~~(D)~~ (C) Where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, other than as a home service provider, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, the gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing those services in the State.
- ~~[(E)~~ (D) Where any person is engaged in the business of a home service provider, the tax shall be imposed on the gross income received or derived from providing interstate or foreign mobile telecommunications services to a customer with a place of primary use in this State when such services originate in one state and terminate in another state, territory, or foreign country; provided that all charges for mobile telecommunications services which are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications originate, terminate, or pass through; provided further that the in-

come from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-24, shall be apportioned under any apportionment factor or formula adopted under ~~section 237-13(6)(D).~~ subparagraph (C). Gross income shall not include:

- (i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;
- (ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;
- (iii) Gross receipts from mobile telecommunications services taxed under section 237-13.8; and
- (iv) Gross receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer.

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22.

- (7) Tax on insurance producers. Upon every person engaged as a licensed producer pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to 0.15 per cent of the commissions due to that activity.
- (8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.
- (9) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted."

SECTION 7. Section 237-14.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding section 237-14, any person engaged in the business of selling interstate or foreign common carrier telecommunications services taxable un-

der section ~~[237-13(6)(D)]~~ 237-13(6)(C), or any public utility defined in section 269-1 having gross income from the conveyance or transmission of telephone or telegraph messages, or from the furnishing of facilities for the transmission of intelligence by electricity, may reasonably segregate in the person's returns, based on its books and records that are kept in the normal course of business:

- (1) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under this chapter from the parts subject to taxation under chapter 239; and
- (2) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under one provision of this chapter ~~[237]~~ from the parts subject to taxation under any other provision of this chapter ~~[237]~~.”

SECTION 8. Section 239-2, Hawaii Revised Statutes, is amended by amending the definition of “gross income” to read as follows:

““Gross income” means the gross income from public service company business as follows:

- (1) Gross income from the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil;
- (2) Gross income from the transportation of passengers or freight, or the conveyance or transmission of telephone or telegraph messages other than mobile telecommunications services, or the furnishing of facilities for the transmission of intelligence by electricity, by land or water or air:
  - (A) Originating and terminating within this State;
  - (B) By means of vessels or aircraft having their home port in the State and operating between ports or airports in the State, with respect to the transportation so effected; or
  - (C) By means of plant or equipment located in the State, between points in the State;
- (3) Gross income from the transportation of freight by motor carriers (other than as stated in paragraph (2)), or the conveyance or transmission of messages or intelligence through wires or cables located or partly located in the State (other than as stated in paragraph (2) or (5));
- (4) Gross income from the operation of a private sewer company or private sewer facility; or
- (5) With respect to a home service provider of mobile telecommunications services, “gross income” includes charges billed for mobile telecommunications services provided by a home service provider to a customer with a place of primary use in this State when the mobile telecommunications services originate and terminate within the same state; provided that all such charges for mobile telecommunications services that are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through. “Gross income” shall not include:
  - (A) Any charges for or receipts from mobile telecommunications services provided to customers of the home service provider whose place of primary use is outside this State;
  - (B) Any receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer; and
  - (C) Any receipts specifically from interstate or foreign mobile telecommunications services taxable under section ~~[237-13(6)(E)]~~,

237-13(6)(D), as determined by the home service provider's books and records kept in the ordinary course of business.

For the purposes of this paragraph, "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22.

The words "gross income" and "gross income from public service company business" shall not be construed to include dividends (as defined by section 235-1) paid by one member of an affiliated public service company group to another member of the same group; or gross income from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one member of an affiliated public service company group to another member of the same group. "Affiliated public service company group" means an affiliated group of domestic corporations within the meaning of chapter 235, all of the members of which are public service companies. "Member of an affiliated public service company group" means a corporation (including the parent corporation) that is included within an affiliated public service company group.

Where the transportation of passengers or property is furnished through arrangements between motor carriers, and the gross income is divided between the motor carriers, any tax imposed by this chapter shall apply to each motor carrier with respect to each motor carrier's respective portion of the proceeds.

Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, any tax imposed by this chapter shall apply to each person with respect to each person's respective portion of the proceeds.

Accounts found to be worthless and actually charged off for income tax purposes, at corresponding periods, may be deducted from gross income as specified under this chapter so far as the accounts reflect taxable sales, but shall be added to gross income when and if subsequently collected.

As used in this paragraph, "tourism related services" means motor carriers of passengers regulated by the public utilities commission."

SECTION 9. Section 239-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding section 239-4, any person engaged in the business of selling interstate or foreign common carrier telecommunications services taxable under section [~~237-13(6)(D)~~], 237-13(6)(C), or any public utility defined in section 269-1 having gross income from the conveyance or transmission of telephone or telegraph messages, or from the furnishing of facilities for the transmission of intelligence by electricity, may reasonably segregate in the person's returns, based on its books and records that are kept in the normal course of business:

- (1) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under this chapter from the parts subject to taxation under chapter 237; and
- (2) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under one provision of this chapter [~~239~~] from the parts subject to taxation under any other provision of this chapter [~~239~~]."

SECTION 10. Section 239-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding subsection (a), the rate of tax upon the portion of the gross income of:

- (1) A public utility that consists of the receipts from the sale of its products or services to another public utility that resells such products or services shall be one-half of one per cent; or
- (2) A public utility engaged in the business of selling telecommunication services to a person defined in section ~~[237-13(6)(D)]~~ 237-13(6)(C) who resells such products or services, shall be as follows:
  - (A) In calendar year 2000, 5.5 per cent;
  - (B) In calendar year 2001, 5.0 per cent;
  - (C) In calendar year 2002, 4.5 per cent;
  - (D) In calendar year 2003, 4.0 per cent;
  - (E) In calendar year 2004, 3.5 per cent;
  - (F) In calendar year 2005, 3.0 per cent;
  - (G) In calendar year 2006, 2.5 per cent; and
  - (H) In calendar year 2007, and thereafter, 0.5 per cent;

provided that the resale of the products, services, or telecommunication services is subject to taxation under this section or subject to taxation at the highest rate under section 237-13(6); and provided further that the public utility's exemption from real property taxes imposed by chapter 246 shall be reduced by the proportion that its public utility gross income described herein bears to its total public utility gross income. Whenever the public utility has other public utility gross income, the gross income from the sale of its products or services to another public utility or a person subject to section ~~[237-13(6)(D)]~~ 237-13(6)(C) shall be included in applying subsection (a) in determining the rate of tax upon the other public utility gross income. The department shall have the authority to implement the tax rate changes in paragraph (2) by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability with due regard to the tax rate changes."

SECTION 11. Section 286-56, Hawaii Revised Statutes, is amended to read as follows:

**"§286-56 Official cars.** All motor vehicles owned by any foreign government or by a consul or other official representative thereof, or by the United States government, or by the State or any political subdivision thereof, shall be registered as herein required by the person having the custody thereof, and the custodian shall display official registration by distinguishing marks thereon which shall be furnished by the director of finance, free of charge, and where motor vehicles are owned by the State or any of its municipal subdivisions, the motor vehicle shall bear the inscription provided for in sections 105-6 to ~~[105-9.]~~ 105-8."

SECTION 12. Section 302B-3, Hawaii Revised Statutes, is amended to read as follows:

**"§302B-3 Charter school review panel; establishment; powers and duties.** (a) There is established the charter school review panel, which shall be placed within the department for administrative purposes only. The panel shall be accountable to the charter schools and the board. Notwithstanding section 302B-9, the panel shall be subject to chapter 92.

- (b) The panel shall consist of twelve members, and shall include:
  - (1) Two licensed teachers regularly engaged in teaching; provided that one teacher is employed at a start-up charter school, and one teacher is employed at a conversion charter school;

- (2) Two educational officers; provided that one educational officer is employed at a start-up charter school, and one educational officer is employed at a conversion charter school;
- (3) One member or former member of a charter school local school board;
- (4) The chair of the board of education or the chair's designee;
- (5) A representative of Hawaiian culture-focused charter schools;
- (6) Two representatives of the University of Hawaii who are not affiliated with charter schools;
- (7) One member with a background in business or accounting who is not affiliated with charter schools;
- (8) One member with a background in the building trades or real estate who is not affiliated with charter schools; and
- (9) A representative from the Hawaii Association of Independent Schools;

provided that the initial appointments for representatives in paragraphs (7) to [(9)] shall be made by September 1, 2007. From June 1, 2007, until such time that the panel has twelve members, five members of the panel shall constitute a quorum to conduct business and a concurrence of at least five members shall be necessary to make any action of the panel valid; provided that, upon filling the twelve seats as required under this subsection, a majority of the panel shall constitute a quorum to conduct business, and the concurrence of a majority of all the members to which the panel is entitled shall be necessary to make any action of the panel valid.

(c) The board shall appoint the remaining members of the panel other than the chair of the board.

(d) Appointed panel members shall serve not more than three consecutive three-year terms, with each term beginning on July 1; provided that the initial terms of the appointed members that commence after June 30, 2006, shall be staggered as follows:

- (1) Four members to serve three-year terms;
- (2) Four members to serve two-year terms; and
- (3) Three members to serve a one-year term.

(e) Notwithstanding the terms of members, the board may add panel members at any time and replace panel members at any time when their positions become vacant through resignation, non-participation, or upon request of a majority of panel members.

(f) Panel members shall receive no compensation. When panel duties require that a panel member take leave of the panel member's duties as a state employee, the appropriate state department shall allow the panel member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to perform that panel member's duties. Panel members shall be reimbursed for necessary travel expenses incurred in the conduct of official panel business.

(g) The panel shall establish operating procedures that shall include conflict of interest provisions for any member whose school of employment or local school board membership is before the panel.

(h) The chair of the panel shall be designated by the members of the panel for each school year beginning July 1 and whenever there is a vacancy. If the panel does not designate its chair for the next school year by July 1, the board shall designate the panel chair. When the panel chair is vacant, the board shall designate an interim chair to serve until the panel designates its chair.

(i) The powers and duties of the panel shall be to:

- (1) Appoint and evaluate the executive director and approve staff and salary levels for the charter school administrative office;
- (2) Review, approve, or deny charter applications for new charter schools in accordance with [E]section[F] 302B-5 for the issuance of new char-



ters; provided that applicants that are denied a charter may appeal to the board for a final decision pursuant to section 302B-3.5;

- (3) Review, approve, or deny significant amendments to detailed implementation plans to maximize the school's financial and academic success, long-term organizational viability, and accountability. Charter schools that are denied a significant amendment to their detailed implementation plan may appeal to the board for a final decision pursuant to section 302B-3.5;
- (4) Adopt reporting requirements for charter schools;
- (5) Review annual self-evaluation reports from charter schools and take appropriate action;
- (6) Evaluate any aspect of a charter school that the panel may have concerns with and take appropriate action, which may include probation or revocation;
- (7) Periodically adopt improvements in the panel's monitoring and oversight of charter schools; and
- (8) Periodically adopt improvements in the office's support of charter schools and management of the charter school system.

(j) In the case that the panel decides not to issue a new charter, or to approve significant amendments to detailed implementation plans, the board may adopt rules for an appeals process pursuant to section 302B-3.5.

(k) The office shall provide for the staff support and expenses of the panel.

~~[(4) The panel shall be exempt from chapter 92.]~~

SECTION 13. Section 304A-104.5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The candidate advisory council shall consist of seven members to be appointed without regard to section 26-34 as follows:

- (1) One member shall be appointed by the president of the senate;
- (2) One member shall be appointed by the speaker of the house of representatives;
- (3) One member shall be appointed by the governor;
- (4) One member shall be appointed by one of the co-chairs of the All Campus Council of Faculty Senate Chairs of the University of Hawaii;
- (5) One member shall be appointed by the chairperson of the Executive Council of the University of Hawaii Student Caucus;
- (6) One member shall be appointed by the chairperson of the Association of Emeritus Regents; and
- (7) One member shall be appointed by the president of the University of Hawaii Alumni Association;

provided that members appointed under paragraphs (4) to (7) shall be selected from the general public and may include members of the constituencies represented; provided further that each appointee satisfies the requirements for appointment provided in this subsection, except that individuals who are or have served as members of the executive councils or boards for the organizations under paragraphs (4) and (5) within the last five years immediately preceding the establishment of or a vacancy on the candidate advisory council for which the persons may be qualified to fill shall not be eligible to serve as members of the candidate advisory council.

The candidate advisory council shall be selected in a wholly nonpartisan manner. If any member has not been appointed within one hundred eighty days of [the] May 1, 2007, the sitting members on the candidate advisory council shall make an interim appointment to fill the vacant seat. The interim appointee shall satisfy the requirements for appointment provided in this subsection and shall serve until the time when the appropriate appointing authority makes an appointment for the vacant

seat as provided in this subsection. Appointees to the candidate advisory council shall have a general understanding of the purposes of higher education, the mission of the University of Hawaii system, and the responsibilities of the board of regents. Appointees shall be individuals who are widely viewed as having placed the broad public interest ahead of special interests, having achieved a high level of prominence in their respective professions, and being respected members of the community.”

SECTION 14. Section 342G-81, Hawaii Revised Statutes, is amended by amending the definition of “deposit glass beverage container” to read as follows:

““Deposit glass beverage container” means:

- (1) The individual, separate, sealed, glass container used for containing, at the time of import, ~~[sixty-four]~~ sixty-eight fluid ounces or less of a beverage; or
- (2) The empty, individual, separate glass container that will be filled with ~~[sixty-four]~~ sixty-eight fluid ounces or less of a beverage and sealed in this State, so that these glass beverage containers will be subject to [F] part VIII[?].”

SECTION 15. Section 346-51, Hawaii Revised Statutes, is amended to read as follows:

**“§346-51 Public assistance and child welfare services administered by department.** The department of human services shall administer public assistance and child welfare services in the several counties except for payments administered under the Federal Supplemental Security Income Program or its successor agency. No person shall be denied the right to petition the department for additional assistance as established under section ~~[346-53(e)]~~ 346-53(f).”

SECTION 16. Section 421-26, Hawaii Revised Statutes, is repealed.

SECTION 17. Act 57, Session Laws of Hawaii 2004, as amended by Act 22, Session Laws of Hawaii 2005, section 49, is amended by amending section 17 to read as follows:

“SECTION 17. This Act shall take effect upon its approval; provided that the amendments made to section 28-8.3, Hawaii Revised Statutes, by this Act shall not be repealed when section 28-8.3, Hawaii Revised Statutes, is reenacted on June 30, ~~[2007]~~ 2010, pursuant to section 14(2) of Act 58, Session Laws of Hawaii 2004.”

SECTION 18. Act 245, Session Laws of Hawaii 2005, as amended by Act 294, Session Laws of Hawaii 2007, section 2, is amended by amending section 8 to read as follows:

“SECTION 8. This Act shall take effect upon its approval, for the purpose of establishing a voluntary employees’ beneficiary association trust pilot program in March, 2006, and shall be repealed on July 1, 2009; provided that sections 89-2, 89-3, 89-6, and 89-9, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the effective date of this Act[-]; and provided further that the amendments made to section 89-6, Hawaii Revised Statutes, by Act 202, Session Laws of Hawaii 2005, shall not be repealed when that section is reenacted on July 1, 2009.”

SECTION 19. Act 85, Session Laws of Hawaii 2007, is amended by amending the prefatory language in section 1 to read as follows:

## ACT 17

“SECTION 1. [~~Section 291-D;~~] Chapter 291D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:”

SECTION 20. Act 197, Session Laws of Hawaii 2007, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on July 1, 2007, and shall be repealed on July 1, 2009; provided that sections 445-231, 445-233, and 445-235, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 21. Act 262, Session Laws of Hawaii 2007, is amended by amending the prefatory language in section 2 to read as follows:

“SECTION 2. Chapter 179D, Hawaii Revised Statutes, is amended by designating [~~section 179-1 to 179-9~~] sections 179D-1 to 179D-9 as part I, entitled:”

SECTION 22. Act 264, Session Laws of Hawaii 2007, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 2007, and shall be repealed on June 30, 2011[-]; provided that section 328L-2, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 23. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 2008, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

SECTION 24. Statutory material to be repealed is bracketed and stricken.<sup>2</sup> New statutory material is underscored.

SECTION 25. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 2008; and provided further that the amendments made to section 28-8.3, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on June 30, 2010, pursuant to section 1 of Act 306, Session Laws of Hawaii 2006.

(Approved April 15, 2008.)

### Notes

1. Semicolon should be bracketed and stricken.
2. Edited pursuant to HRS §23G-16.5.

## ACT 17

S.B. NO. 2425

A Bill for an Act Relating to Arson.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 706-606.2, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) In addition to any other penalty imposed, a person convicted of arson involving fire set to brush, grass, vegetation on the land resulting in damage to ten thousand square feet or more of property, may be required to:

- (a) Pay any costs associated with extinguishing the fire ~~[-and], which shall include, but are not limited to:~~
- (i) Personnel salary, benefits, and overtime;
  - (ii) The operation, maintenance, and repair of apparatus, aircraft, and equipment;
  - (iii) Supplies expended, damaged, or lost; and
  - (iv) Rehabilitation supplies during fire fighting operations; and
- (b) Perform community service work in the region in which the property damage occurred.

With regard to any fine or monetary penalty that may be imposed on a minor convicted or adjudicated for an offense of arson, the parents or legal guardians of the minor shall be liable for the percentage of costs associated with extinguishing the fire based upon the apportionment of fire damage to real or personal property caused by the minor as a result of committing the offense of arson, regardless of whether the property is publicly or privately owned.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 16, 2008.)

## ACT 18

H.B. NO. 2467

A Bill for an Act Relating to Fire Protection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 132-3, Hawaii Revised Statutes, is amended to read as follows:

**“§132-3 Adoption of state fire code.** The state fire council shall, after public hearings pursuant to chapter 91, adopt ~~[prior to July 1, 1979,]~~ a state fire code setting forth minimum requirements relative to the protection of persons and property from fire loss including without limitation: (1) the storage, handling and use of hazardous substances, materials and devices; and (2) the control of conditions hazardous to life or property in the design, use or occupancy of buildings and premises. The state fire code ~~[-, insofar as is practicable, shall complement, augment and be consistent in form and language with the building and other codes of the respective counties. Upon adoption by the state fire council, the state fire code shall be transmitted to the respective county councils which may, by ordinance, either enact its provisions or enact more stringent provisions relating to protection of persons and property against fire loss; provided that the county councils may enact less stringent provisions with the prior written approval of the state fire council.]~~ shall become part of the state building code as provided in section 107-25. The state fire council shall meet annually to review and amend the state fire code.”

SECTION 2. Section 261-4, Hawaii Revised Statutes, is amended to read as follows:

“§261-4 Airports, general. (a) Establishment, operation, maintenance. The department of transportation may, on behalf of and in the name of the State, out of appropriations and other moneys available or made available for such purposes, plan, acquire, establish, construct, enlarge, improve, maintain, equip, install, operate, regulate, and protect, airports, air navigation facilities, buildings, and other facilities to provide for the servicing of aircraft; to provide for the comfort, accommodation, and convenience of air travelers; and to protect against airport hazards.

(b) Acquisition of property. By purchase, gift, devise, lease, or condemnation in accordance with chapter 101, the department may acquire property, real or personal, or any interest therein, including the property rights, estates, and interests mentioned in section 262-11. The department may acquire rights and interests in airports owned or controlled by others, for the purpose of meeting a civilian need which is within the scope of its functions, even though it does not have the exclusive control and operation of such airports. The department may also acquire excess federal lands as permitted by federal law.

(c) Structures and improvements. All structures and improvements to land, to be used for airport purposes, may be planned, designed, and constructed by the department.

(d) Use of state and municipal facilities and services. In carrying out this chapter, the department may use the facilities and services of other agencies of the State and of the municipalities of the State and the agencies and municipalities shall make available their facilities and services.

(e) Fire and safety inspection. The State shall conduct fire and safety inspections at all state-owned airport facilities at least once a year, as provided in section 132-6(b).”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 17, 2008.)

**ACT 19**

S.B. NO. 2402

A Bill for an Act Making Various Housekeeping Amendments to Volume 11 of the Hawaii Revised Statutes for the Purpose of Correcting Errors and References, and Clarifying Language.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 476-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “credit sale contract” or “contract” to read: ““Credit sale contract” or “contract” means any agreement, including a conditional sale contract, a retail installment contract, or any other form of instrument<sup>[5]</sup> evidencing an obligation to pay the price of goods, services, or both, purchased in a credit sale, either:

(1) ~~[by]~~ By payment thereof over a period of time subject to a finance charge ~~[or];~~ or

(2) ~~[pursuant]~~ Pursuant to a written agreement, subject to payment in more than four installments not including a down payment,

~~[and in either case]~~ whether or not the contract contains a title retention provision.

~~[This term]~~ “Credit sale contract” includes any contract for the bailment or leasing

of goods (unless terminable without penalty at any time by the bailee or lessee) by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the goods and services involved and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, for no additional consideration or for nominal consideration, the owner of the goods upon full compliance with the terms of the contract.”

2. By amending the definition of “goods” to read:

““Goods” ~~[include]~~ includes all things which are movable at the time the credit sale is entered into or which will be movable when they thereafter come into existence or which are or will be fixtures (sections 490:9-334 and 490:9-604)~~], but except].~~ Except as provided in this paragraph, “goods” does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. “Goods” ~~[include]~~ includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, growing crops, and merchandise certificates or coupons, issued by a credit seller, to be used in the face amount in lieu of cash in exchange for goods sold by such a seller.”

SECTION 2. Section 476-8, Hawaii Revised Statutes, is amended to read as follows:

**“§476-8 Insurance provisions. (a)** The amount, if any, charged for insurance~~]~~ shall not exceed the premiums chargeable in accordance with rate filings made with the ~~[commissioner of insurance]~~ state insurance commissioner under chapter 431 for similar insurance.

The seller or holder, if dual interest insurance on the goods is included in a credit sale contract~~]~~ and a separate charge is made therefor, shall within thirty days after execution of the credit sale contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, and the scope of the coverage and all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance.

The buyer of goods under a credit sale contract may purchase ~~[such]~~ any required insurance from ~~[a]~~ an insurance producer of the buyer’s own selection, and in an insurance company of the buyer’s own selection authorized to do business in this State; provided that the seller or holder shall have the right for reasonable cause to disapprove of the insurance company selected by the buyer to underwrite the insurance.

**(b)** In any credit sale contract for the sale of a motor vehicle where insurance is contracted for as a part of the sale, and the insurance does not include public liability insurance for bodily injury and property ~~[damages,]~~ damage, the contract shall contain, on the same page as the disclosures therein concerning insurance, a notice substantially similar to the following:

“THIS DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE. IT DOES NOT MEET THE REQUIREMENTS FOR PROOF OF FINANCIAL RESPONSIBILITY UNDER HAWAII LAW.”

**(c)** If any ~~[such]~~ insurance policy or certificate is canceled, the unearned insurance premium refund received by the holder of the contract shall at the option of the holder either be credited to the final maturing installments of the credit sale contract or be paid to the buyer, except to the extent applied toward payment for similar insurance protecting the interests of the buyer and holder of the contract or either of them.”

SECTION 3. Section 477E-2, Hawaii Revised Statutes, is amended by amending the definition of "creditor" to read as follows:

"Creditor" means any bank; savings and loan association; trust company; financial services loan company [~~or small loan company~~]; credit union; mortgage banker, broker, or solicitor; pawnbroker; mutual benefit society or fraternal benefit society; debt adjuster; the issuer of a credit card as defined in section 708-800; any person who initiates, extends, renews, or continues loans of money or credit; any person who regularly arranges for the initiation, extension, renewal, or continuation of a loan of money or credit; or any assignee of an original creditor who participates in the decision to grant, extend, renew, or to continue such loan or credit."

SECTION 4. Section 477E-5, Hawaii Revised Statutes, is amended to read as follows:

"~~§477E-5 [Civil penalties.]~~ Unfair or deceptive act or practice. Any creditor who violates or attempts to violate any provision of this chapter shall be deemed to have engaged in an unfair ~~and~~ or deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2."

SECTION 5. Section 480-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) Whenever the State, any county, [~~or city and county~~] or any of its political subdivisions or governmental agencies, is injured in its business or property by reason of anything forbidden or declared unlawful by this chapter, it may sue to recover threefold the actual damages sustained by it.

(b) The attorney general may bring an action on behalf of the State, any county, or any of its political subdivisions or governmental agencies to recover the damages provided for by this section, or by any comparable provisions of federal law."

2. By amending subsection (d) to read:

"(d) If judgment is in favor of the State, any county, or any of its political subdivisions or governmental agencies under any provision of this chapter, the attorney general or the director of the office of consumer protection shall be awarded reasonable attorney's fees together with the cost of suit; provided further that in any class action lawsuit brought by the attorney general in behalf of indirect purchasers, the attorney general shall in addition be awarded an amount commensurate with expenses reasonably expected to be expended in distribution of damages to the indirect purchasers."

SECTION 6. Section 480-20, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The attorney general shall enforce the criminal and civil provisions of this chapter. The county attorney [~~of any county, the prosecuting attorney and the~~], corporation counsel, or prosecuting attorney of [the city and county] any county shall investigate and report suspected violations of this chapter to the attorney general.

(b) Whenever this chapter authorizes or requires the attorney general to commence any action or proceeding, including proceedings under section 480-18, the attorney general may require the county attorney, [~~prosecuting attorney, or~~] corporation counsel, or prosecuting attorney of any [~~county or city and~~] county, holding office in the circuit where the action or proceeding is to be commenced or maintained, to maintain the action or proceeding under the direction of the attorney general."

SECTION 7. Section 480-22, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A final judgment or decree rendered in any civil or criminal proceeding brought by the State under this chapter shall be prima facie evidence against the defendant in any action or proceeding brought by any other party under this chapter, or by the State, county, ~~[or city and county,]~~ or any of its political subdivisions or governmental agencies, under section 480-14, against the defendant as to all matters respecting which the judgment or decree would be an estoppel between the parties thereto. This section shall not apply to consent judgments or decrees entered before any complaint has been filed; provided that when a consent judgment or decree is filed, the attorney general shall set forth at the same time the alleged violations and reasons for entering into the consent judgment or decree. No consent judgment or decree that is entered before any complaint has been filed shall become final until sixty days from the filing of the consent judgment or decree or until the final determination of any exceptions filed, as hereinafter provided, whichever is later. During the sixty-day period any interested party covered under section 480-13 may file verified exceptions to the form and substance of the consent judgment or decree, and the court, upon a full hearing thereon may approve, refuse to approve, or may modify the consent judgment or decree.

(b) A plea of nolo contendere and a final judgment or decree rendered pursuant to that plea in any criminal action under this chapter shall not be admissible against the defendant in any action or proceeding brought by any other party under this chapter, or by the State, county, ~~[or city and county,]~~ or any of its political subdivisions or governmental agencies, under section 480-14 against the defendant.”

SECTION 8. Section 480-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No individual shall be criminally prosecuted or subjected to any criminal penalty under this chapter for or on account of any transaction, matter, evidence, or thing concerning which the individual may so testify or produce in any investigation brought by the attorney general pursuant to section 480-18, or any county attorney, ~~[prosecuting attorney, or]~~ corporation counsel, or prosecuting attorney of any ~~[county or city and]~~ county, when the individual has done so pursuant to an order issued under section 480-23.1~~;~~; provided that no individual so testifying shall be exempt from prosecution or punishment for perjury, for giving a false statement, or for an offense involving a failure to comply with the order.”

SECTION 9. Section 480-23.1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A judge of a circuit court or of a district court may, upon application by the attorney general~~;~~ or any county attorney, ~~[prosecuting attorney, or]~~ corporation counsel, or prosecuting attorney of any ~~[county or city and]~~ county, issue an order requiring the person to testify or to produce a record, document, or other object, notwithstanding the person’s refusal to do so on the basis of the person’s privilege against self-incrimination. The application shall specify whether the immunity being sought is use immunity as set forth in section 480-23.2 or transactional immunity as set forth in section 480-23.3.”

SECTION 10. Section 480D-2, Hawaii Revised Statutes, is amended by amending the definition of “debt collector” to read as follows:

““Debt collector” means any person, who is not a collection agency~~;~~ regulated pursuant to chapter 443B, and who in the regular course of business collects or attempts to collect consumer debts owed or due or asserted to be owed or due to the collector.”



SECTION 11. Section 480F-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person who is not a consumer and is injured by a wilful violation of ~~[the]~~ this chapter may bring an action for the recovery of damages, a proceeding to restrain and enjoin those violations, or both. If judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages, whichever sum is greater, and reasonable attorneys’ fees together with the costs of suit.”

SECTION 12. Section 481B-1.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

(e) It shall be an unlawful practice and a violation of this chapter for any person, in any contest or sweepstakes in which the winning entry or entries are to be determined by a drawing or some other method based on an element of chance~~[-]~~ to:

- (1) ~~[To promote]~~ Promote a contest or sweepstakes in which some or all of the prizes may not be awarded, or to fail to award all prizes or awards offered, unless the person makes the following disclosures to each offeree in writing and in a conspicuous manner prior to the acceptance of the offeree’s entry:
  - (A) That some or all of the prizes may not be awarded; and
  - (B) The date or dates on which a determination of winners will be made; ~~[and]~~ or
- (2) ~~[To offer]~~ Offer a prize of real property unless the offeror files and maintains with the director of commerce and consumer affairs a bond in a sum not less than \$10,000, executed by the offeror, and naming the director as the obligee and a surety company authorized to do business in the State as surety. The bond shall be continuous in form and conditioned upon the award of the real property to an eligible participant. The bond shall run to the State for the benefit of any person who failed to receive the real property due to the failure of the offeror to award the real property pursuant to the terms of the offer. The surety may cancel the bond by giving sixty days’ notice in writing to the director~~[-]~~ of commerce and consumer affairs. Upon cancellation or expiration of the bond, the surety shall remain liable for any claims against the bond for a period of one year; provided that the claim arose while the bond was in effect and the director of commerce and consumer affairs notifies the surety of any claims within ninety days of discovery of the claim.”

SECTION 13. Section 481B-4, Hawaii Revised Statutes, is amended to read as follows:

“**§481B-4 [Penalty.] Remedies.** Any person who violates this chapter shall be deemed to have engaged in an unfair method of competition ~~[or]~~ and unfair ~~[and]~~ or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2.”

SECTION 14. Section 481B-5.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) As used in this section, unless the context otherwise requires:

“Ancillary charges” includes all charges paid to the merchant that are necessary for the use of the goods for their purchased purpose and all sums paid for agreements for service, warranty, or replacement.

“Conspicuous sign” means a sign posted in the merchant’s place of business in a location reasonably calculated to bring the sign to the attention of purchasers before a purchaser makes a purchase.

“Exchange” means a transaction between a merchant and a purchaser in which a previously purchased item is exchanged for another item.

“Full amount of the payment” includes the amount paid for the returned goods, including any ancillary charges or taxes incident to the purchase of the returned goods, and without any deduction for restocking of the merchant’s inventory, or for administration of the refund, exchange, or merchandise credit.

“Merchandise credit” means the crediting to the purchaser of the full amount of the payment upon return of the goods and allowing the purchaser to purchase goods from the merchant with the merchandise credit, or applying to the purchaser’s credit account with the merchant, in the amount of the merchandise credit.

“Merchant” means any person engaged in the business of offering goods for sale to purchasers at retail.

“Proof of purchase” means a sales slip, receipt, credit card slip, or any other documentation that substantiates the sale of the goods from the merchant and the amount of payment.

“Purchaser” means a natural person who is returning goods that were purchased or received primarily for personal, family, or household purposes.

“Refund” means the return to the purchaser of the full amount of the payment upon return of the goods, in accordance with this [chapter:] section.

“Repacking and transportation charges” means the charges for repacking, [~~pickup,~~] pick up, and transportation of goods previously delivered, unpacked, and set up by the merchant at the direction of the purchaser.

“Return” or “return of goods” means the acceptance by the merchant of goods from a purchaser, whether for refund, merchandise credit, or exchange, and includes the cancellation of a custom or special order before the merchant is obligated to make payment on the order and the cancellation of a layaway.”

SECTION 15. Section 481B-6, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“§481B-6 Sale of solar energy devices; disclosure requirements[; penalty].”**

SECTION 16. Section 481B-11, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“§481B-11 [~~Refunds; offer of services;~~] Sensitivity-awareness group seminars.”**

SECTION 17. Section 481B-13, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any violation of this section shall constitute an unfair [~~and~~] or deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2.”

SECTION 18. Section 481C-1, Hawaii Revised Statutes, is amended to read as follows:

**“§481C-1 Definitions.** In this chapter, unless the context or subject matter otherwise requires:

[~~(1) (A)~~] “Door-to-door sale” [~~means (i) a~~];

(1) Means:

- (A) A sale of goods or services solicited in person and signed by the buyer at a place other than the seller's business address shown on the contract; [or (ii) a]
- (B) A sale of goods or services solicited in person or by mail[;] or telephone; or [public]
- (C) A public or private notice or advertisement if the solicitation includes an offer of a gift, prize, premiums, stamps, coupons, tickets, or other redeemable devices as an inducement for the person solicited or a member of the person's immediate family to go to the seller's place of business, whether the buyer signs at the seller's place of business or elsewhere[;] and
- ~~(B)~~ The term "door-to-door sale" does] (2) Does not include a transaction:
  - ~~(i)~~ (A) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; [or]
  - ~~(ii)~~ (B) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; [or]
  - ~~(iii)~~ (C) Conducted and consummated entirely by mail or telephone[;] and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or
  - ~~(iv)~~ (D) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion.

[2] "Goods" means all chattels personal, other than money and things in action, except as herein provided, and includes emblements, growing crops, and things which attach to or form a part of land which are agreed to be severed before sale under the contract and things which at the time of sale or subsequently are to be so affixed to real property as to become a part thereof, whether or not severable therefrom. The term includes merchandise certificates or coupons, issued by a seller, to be used in their face amount in lieu of cash in exchange for goods sold by such a seller. The term also includes services as herein defined.

[3] "Services" means work, labor, or service of any kind whether purchased primarily for personal, family, or household use, and whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods, and includes repairs, alterations, or improvements upon or in connection with real property.

[4] "Seller" means any person, partnership, corporation, association, or other group, however organized, engaged in the door-to-door sale of goods or services.

~~[(5)]~~ “Sale” means ~~[and includes]~~ any sale with a purchase price of \$5 or more, or \$25 if the merchandise is capable of being delivered at one time, other than for resale, of goods to a buyer pursuant to a contract. It does not include a sale to a business establishment.

~~[(6)]~~ “Contract” means ~~[and includes]~~ any agreement, including a conditional sales contract or any other form of instrument, evidencing an obligation to pay the purchase price, or moneys advanced in payment of the purchase price of goods, by payment thereof in one payment, or more than one payment made in installments over a period of time, whether or not the contract contains a title retention provision.

~~[(7)]~~ “Cash sale price” means the cash sale price stated in a contract for which the seller would sell to the buyer, and the buyer would buy from the seller, the goods which are the subject matter of the contract if the sale were a sale for cash instead of by payments made in installments over a period of time. The cash sale price may include taxes, registration, license, and other fees and charges for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

~~[(8)]~~ “Business day” means any calendar day, except Saturday, Sunday, or any state or federal holiday.”

SECTION 19. Section 481D-3, Hawaii Revised Statutes, is amended to read as follows:

~~[[§481D-3]]~~ **Posting of notice.** (a) A person required to post notice under this chapter shall post a notice which shall be not less than twenty-two inches by thirty-three inches in size and posted in a conspicuous place ~~[which]~~ that is visible and readable outside the place of business where the sale is to be held. The notice shall be signed under penalty of perjury. Where the person is a corporation, the notice shall be signed by two officers. Where the person is a partnership, the notice shall be signed by two partners. The notice shall include the following:

- (1) The name and address of the owner of the goods being sold. If the ~~[person]~~ owner is a partnership, corporation, firm, or association, the notice shall contain the full name and position of the individual filing the notice;
- (2) The type of sale and manner in which the sale is to be conducted and the address where the sale is to be conducted;
- (3) The dates and ~~[time]~~ times during which the sale is to be conducted;
- (4) The name and street address of the person in charge of and responsible for the conduct of the sale;
- (5) An explanation regarding the condition or necessity for the sale, including a statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale. The notice shall contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale. If the sale is with respect to a removal sale, it shall contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale, in addition to the location of the premises to which the business is to be moved. If the sale is with respect to the sale of goods damaged by fire, smoke, water, or otherwise, the notice shall contain a statement as to the time, location, and cause of the damage;
- (6) The notice shall state that an inventory report form, containing a detailed list and inventory of each item of inventory costing over \$100 to be sold, itemizing the goods to be sold, and containing sufficient information concerning each item, including make and brand name, shall be available for inspection on the store premises on request. The inventory

report form shall list separately goods ~~[which]~~ that were purchased during the sixty-day period immediately prior to the date of posting the notice showing the cost price of each item to the owner of the inventory together with the name and address of the seller of the item to the owner of the inventory, the date of purchase, the date of delivery to the owner of the inventory, and the total value of the inventory at cost;

- (7) A statement that no goods will be added to the inventory after posting the notice or during the sale, and that the inventory contains no goods received on consignment; and
- (8) A statement disclosing the date from which the person has maintained a place of business within the State prior to the posting of the notice.

~~[(9)]~~ (b) This section shall not apply to any person who acquired a right, title, or interest in the goods:

- ~~[(A)]~~ (1) As an heir, devisee, legatee, or surviving joint tenant;
- ~~[(B)]~~ (2) As an executor, administrator, trustee, guardian, or conservator; or
- ~~[(C)]~~ (3) Pursuant to an order or process of a court of competent jurisdiction.”

SECTION 20. Section 481D-5, Hawaii Revised Statutes, is amended by amending its title to read as follows:

~~“[H]§481D-5[~~]-Violation; penalties.~~ Violations.”~~

SECTION 21. Section 481G-6, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§481G-6[~~]-Exceptions.~~ Exceptions. No action may be brought under section 481G-4 in connection with the termination, cancellation, or nonrenewal of a dealership if the dealership provides for the binding arbitration of disputes arising thereunder, including disputes related to the termination, cancellation, or nonrenewal of the dealership, in accordance with chapter 658A or the rules of the American Arbitration Association.”~~

SECTION 22. Section 481H-8, Hawaii Revised Statutes, is amended by amending its title to read as follows:

~~“[H]§481H-8[~~]-Penalty and remedies.~~ Remedies.”~~

SECTION 23. Section 481I-2, Hawaii Revised Statutes, is amended by amending the definitions of “lessee”, “motor vehicle”, “purchase price”, and “replacement motor vehicle” to read as follows:

““Lessee” means any consumer who leases a motor vehicle;

- (1) ~~[for]~~ For one year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such motor vehicle~~;~~; or ~~[any consumer who leases a motor vehicle]~~
- (2) ~~[pursuant]~~ Pursuant to a lease-purchase agreement.

“Motor vehicle” ~~[means]~~:

- (1) Means a self-propelled vehicle primarily designed for the transportation of persons or property over public streets and highways which is used primarily for personal, family, or household purposes~~[-For purposes of this definition, a “motor vehicle” also includes a];~~
- (2) Includes but shall not be limited to:
  - (A) A “demonstrator”, which means a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model or type~~;~~;

- (B) An individually registered vehicle used for an individual's business purposes as well as for personal, family, or household purposes; and
- (C) A vehicle owned or leased by a sole proprietorship, corporation, or partnership which has purchased or leased no more than one vehicle per year, used for household, individual, or personal use in addition to business use; and
- (3) ~~Shall~~ [but does] not include mopeds, motorcycles, or motor scooters, as those terms are defined in chapter 286, or vehicles over 10,000 pounds, gross vehicle weight rating. ~~[For purposes of this definition, a "motor vehicle" also includes (1) an individually registered vehicle used for an individual's business purposes and for personal, family, or household purposes; and (2) a vehicle owned or leased by a sole proprietorship, corporation or partnership which has purchased or leased no more than one vehicle per year, used for household, individual, or personal use in addition to business use.]~~

"Purchase price" means the cash price appearing in the sales agreement or contract and paid for the motor vehicle, including any net allowance for a trade-in vehicle. Where the consumer is a second or subsequent purchaser and the arbitration award is for a refund of the purchase price of the motor vehicle, "purchase price" means the purchase price of the second or subsequent purchase and shall not [~~to~~] exceed the purchase price paid by the original purchaser.

"Replacement motor vehicle" means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original acquisition, including any service contract, undercoating, rustproofing, and [~~factory or dealer installed~~] factory-installed or dealer-installed options."

SECTION 24. Section 481J-2, Hawaii Revised Statutes, is amended by amending subsections (i) and (j) to read as follows:

(i) The dealer shall provide to the consumer, each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible warranty repair receipt indicating any diagnosis made and all work performed on the vehicle, including[-] but not limited to:

- (1) The defect or malfunction complained of;
- (2) The work performed in an attempt to correct the defect or malfunction and the identity of the repairer if it is not the dealer;
- (3) The parts replaced in performing such work;
- (4) The date and odometer reading when the vehicle was submitted for repair; and
- (5) The date when the vehicle was made available to the consumer.

The consumer shall sign a copy of the warranty repair receipt.

(j) A dealer may repair, within the meaning of this section, either by performing the repair itself or, if the dealer does not have a repair facility, by arranging and making payment for prompt repair by a motor vehicle repair dealer [~~registered~~] licensed under chapter 437B."

SECTION 25. Section 481J-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

(a) If the dealer or its agent fails to correct a defect or malfunction as required by the warranty specified in section 481J-2 after a reasonable period of time, the dealer shall accept return of the used motor vehicle from the consumer and refund the full purchase price, including [~~sales~~] general excise tax, less a reasonable allowance for any damage not attributable to normal wear or usage, and with an adjust-

ment for any modifications which either increase or decrease the market value of the vehicle. A reasonable allowance for use shall be fifteen cents for each mile the used motor vehicle has been operated between its sale and its return.”

SECTION 26. Section 481J-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§481J-7[H] Civil and administrative actions for violations.** (a) A consumer of a used motor vehicle shall have a private right of action against a dealer to enforce this ~~[section]~~ chapter and recover costs, including reasonable attorney’s fees, incurred in the civil action.

(b) It shall be an affirmative defense to any claim under this section that:

- (1) The alleged malfunction or defect does not substantially impair the use or safety of the used motor vehicle;
- (2) The alleged malfunction or defect is the result of abuse, neglect, or unreasonable modifications or alterations of the used motor vehicle; or
- (3) The alleged malfunction or defect was covered or warranted under an express warranty issued by the manufacturer of the used motor vehicle, and that such warranty issued by the manufacturer of the used motor vehicle was in effect during the warranty period established by this ~~[section.]~~ chapter.

(c) Any private civil action brought pursuant to this section shall be commenced within one year of the date of original delivery of the used motor vehicle to the consumer.

(d) Nothing in this chapter shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(e) A ~~[motor vehicle]~~ dealer’s failure to comply with any of the provisions of this chapter may result in disciplinary action pursuant to chapter 437, which may result in sanctions, including~~[-]~~ but not limited to~~[-]~~ suspension or revocation of license, and the imposition of fines or restitution.”

SECTION 27. Section 481K-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For purposes of subsection (a):

- (1) The “current value of the written lease” equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device ~~[dealer’s]~~ lessor’s early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor’s early termination savings;
- (2) A “reasonable allowance for use” shall not exceed the amount obtained by multiplying the total amount the consumer paid or for which the written lease obligates the consumer to pay by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, its agent, assistive device lessor, or assistive device dealer; and
- (3) It shall be presumed that a manufacturer has had a “reasonable opportunity to repair” if the manufacturer or its agents fails to repair the same nonconformity ~~[with]~~ within two attempts, or the assistive device is out of service, including by reason of attempts to repair one or more nonconformities, for a cumulative total of more than thirty business days after the consumer has returned it for repair.”

SECTION 28. Section 481L-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§481L-4]]~~ **Civil remedies.** A retail lessor who fails to comply with the requirements of this chapter shall be deemed to have engaged in an unfair ~~[and] or~~ deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2.”

SECTION 29. Section 481M-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§481M-4]]~~ **Provisions prohibited in agreements.** A lease-purchase agreement may not contain:

- (1) A confession of judgment;
- (2) A negotiable instrument;
- (3) A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;
- (4) A wage assignment;
- (5) A waiver by the ~~[consumer]~~ lessee of claims or defenses; or
- (6) A provision authorizing the lessor or a person acting on the lessor’s behalf to enter upon the ~~[consumer’s]~~ lessee’s premises or to commit any breach of the peace in the repossession of goods.”

SECTION 30. Section 481M-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§481M-7]]~~ **Additional charges.** (a) A lessor may contract for and receive an initial nonrefundable fee not to exceed \$10 per ~~[contract.]~~ lease-purchase agreement. If the lessor requires a security deposit, the amount of the deposit and the conditions under which it will be returned shall be disclosed pursuant to section 481M-13.

(b) A lessor may contract for and receive an initial delivery charge per ~~[contract]~~ lease-purchase agreement that shall not [to] exceed \$15 in the case of [a lease-purchase] an agreement covering five or fewer items if[, in either case,] the lessor actually delivers the items to the lessee’s dwelling and the delivery charge is disclosed pursuant to section 481M-14. The delivery charge shall be assessed in lieu of and not in addition to the initial [charge] fee in subsection (a). A lessor may not contract for or receive a delivery charge on property redelivered after repair or maintenance.

(c) A lessor may contract for and receive a charge for picking up late payments from the lessee if the lessor is required to do so pursuant to the ~~[rental purchase]~~ lease-purchase agreement or is requested to visit the lessee to pick up a payment. In a lease-purchase agreement with payment or renewal dates ~~[which] that~~ are on a monthly basis, this charge may not be assessed more than three times in any six-month period. In lease-purchase agreements with payments or renewal options on a weekly or biweekly basis, this charge may not be assessed more than six times in any six-month period. No charge assessed pursuant to this subsection may exceed \$10. A pickup fee may be assessed pursuant to this subsection only in lieu of and not in addition to any late charge assessed pursuant to subsection (d).

(d) The parties may contract for late charges as follows:

- (1) For lease-purchase agreements with monthly renewal dates, a late charge not exceeding \$5 may be assessed on any payment not made within five days after payment is due, or return of the property is required; or
- (2) For lease-purchase agreements with weekly or biweekly renewal dates, a late charge not exceeding \$3 may be assessed on any ~~[payments]~~ payment not made within three days after payment is due, or return of the property is required.



A late charge on lease-purchase agreements may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected at the time it accrues or at any time thereafter. A lessor may elect to waive imposition of a late charge due on an accrued payment in accordance with the terms of the lease-purchase agreement; ~~[except that,]~~ provided that the waiver shall be in writing and, once a late charge is waived for a specific payment, the lessor may not seek to impose a late ~~[fee]~~ charge for the accrued payment in question. No late charge shall be assessed against a payment that is timely, even though an earlier late charge has not been paid in full.”

SECTION 31. Section 481M-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In case of a violation by a lessor of any provision of this chapter with respect to any lease-purchase agreement, the lessee may bring a suit in any court of competent jurisdiction to recover actual damages from the lessor, or may set off or counterclaim in any action by the lessor ~~[actual damages]~~. If the court finds that any violation by the lessor has occurred, the court shall award to the lessee a minimum recovery of \$250 or twenty-five per cent of the total cost to acquire ownership under the lease-purchase agreement, whichever is greater.”

SECTION 32. Section 481M-12, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§481M-12**~~[H]~~ **Waivers.** A lessor shall not require a lessee to waive:

- (1) Service of process;
- (2) Any defense;
- (3) Any counterclaim; or
- (4) Right of action against the lessor or a person acting on the lessor’s behalf as the lessor’s agent;

in collection of payments under the ~~[lease]~~ lease-purchase agreement or in repossession of the ~~[lease]~~ leased property.”

SECTION 33. Section 481M-13, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§481M-13**~~[H]~~ **Disclosure of information.** (a) The lessor shall disclose to the lessee the information required by this chapter. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by these disclosures. The disclosures shall be made before consummation of the lease-purchase agreement.

(b) The disclosures shall be made clearly and conspicuously in writing ~~[and a]~~ and in not less than ten-point standard type. A copy of the disclosures shall be included with ~~[of]~~ the lease-purchase agreement provided to the lessee ~~[in not less than ten-point standard type]~~. All disclosures required by this chapter shall be printed or typed in a color or shade that clearly contrasts with the background. The disclosures required under section 481M-14 shall be made on the face of the ~~[contract]~~ lease-purchase agreement above the line for the lessee’s signature. Before any payment is due, the lessor shall furnish the lessee with an exact copy of the lease-purchase agreement, which shall be signed by the lessee and which shall evidence the lessee’s agreement.

(c) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement by the lessee after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of this chapter.”

SECTION 34. Section 481M-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

- (1) The total number, total amount, and timing of all payments necessary to acquire ownership of the property;
- (2) A statement that the lessee shall not own the property until the lessee has made the total payment necessary to acquire ownership;
- (3) A statement that the lessee shall be responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;
- (4) A brief description of the leased property[;] sufficient to identify the property to the lessee and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used[~~, but~~]; provided that a statement that indicates that new property is used property does not violate this chapter;
- (5) A brief description of any damages to the leased property;
- (6) A statement of the cash price of the property. If the agreement involves a lease of two or more items as a set[;] in one agreement, a statement of the aggregate cash price of all items is sufficient;
- (7) The total of initial payments [~~paid~~] made or required at or before consummation of the agreement or delivery of the property, whichever is later;
- (8) A statement that the total of payments shall not include other charges, such as delivery, taxes, late payment, pickup, and reinstatement fees, which fees shall be separately disclosed in the [~~contract~~] agreement;
- (9) A statement clearly summarizing the terms of the lessee’s option to purchase, including a statement that the lessee has the right to exercise an early-purchase option and the price, formula, or method for determining the price at which the property may be so purchased;
- (10) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer’s express warranty covers the leased property at the time the lessee acquires ownership of the property, the warranty shall be transferred to the lessee, if allowed by the terms of the warranty;
- (11) The date of the transaction and the identities of the lessor and lessee;
- (12) A statement that the lessee may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair, ordinary wear and tear excepted, upon expiration of any lease term along with any past due rental payments; and
- (13) Notice of the right to reinstate an agreement as provided in this chapter.”

2. By amending subsection (c) to read:

“(c) With respect to matters specifically governed by the [~~Federal~~] federal Consumer Credit Protection Act (15 U.S.C. sections 1601 to 1674), compliance with that Act satisfies the requirements of this section.”

SECTION 35. Section 481M-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A lessee who breaches any lease-purchase agreement, including but not limited to the failure to make timely [~~rental~~] lease payments, shall have the right to reinstate the original lease-purchase agreement without losing any rights or options previously acquired under the lease-purchase agreement if both of the following apply:

- (1) Subsequent to having failed to make a timely ~~rental~~ lease payment, the lessee has promptly surrendered the property to the lessor, in the manner as set forth in the lease-purchase agreement, and if and when requested by lessor; and
- (2) Not more than thirty days have passed since the lessee returned the ~~lease~~ property; ~~except~~ provided that if the lessee has made more than sixty per cent of the total number of payments required under the lease-purchase agreement to acquire ownership, the thirty-day period shall be extended to a sixty-day period.”

SECTION 36. Section 481M-17, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§481M-17**~~]]~~ **Renegotiation for new agreement and extensions.** (a) A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and lessee. A renegotiation shall be considered a new agreement requiring new disclosures. ~~[However, the]~~

(b) ~~The~~ following events shall not be treated as renegotiations:

- (1) The addition or return of property in a multiple-item agreement or in the substitution of the ~~lease~~ leased property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five per cent;
- (2) A deferral or extension of one or more periodic payments, or portions of a periodic payment;
- (3) A reduction in charges in the lease or agreement; ~~and~~ or
- (4) A lease or agreement involved in a court proceeding.

(c) No disclosures are required for any extension of a lease-purchase agreement.”

SECTION 37. Section 481P-2, Hawaii Revised Statutes, is amended by amending its title to read as follows:

~~“§481P-2 [Unfair or deceptive acts or practices prohibited.]~~ **Violations.**”

SECTION 38. Section 481P-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§481P-3**~~]]~~ **Abusive telemarketing acts or practices.** It is an abusive telemarketing act or practice and a violation of this chapter for any seller or telephone solicitor to engage in the following conduct:

- (1) Threaten, intimidate, or use profane or obscene language;
- (2) Request a fee to remove derogatory information from or to improve a consumer’s credit history or credit record until:
  - (A) The time frame in which the seller or telephone solicitor has represented that all of the goods or services will be provided to that consumer has expired; and
  - (B) The seller or telephone solicitor has provided the consumer with documentation in the form of a credit report from a credit reporting agency demonstrating that the promised results have been achieved, the report having been issued more than six months after the results were achieved. Nothing in this chapter ~~should~~ shall be construed to affect the requirement of section 604 of the Fair Credit Reporting Act, 15 U.S.C. section 1681b, that a consumer report may only be obtained for a specified permissible purpose;
- (3) Request or receive payment from a consumer to recover or otherwise aid in the return of money or any other item lost by the consumer in a

- telemarketing transaction, until seven business days after the money or other item is delivered to the consumer;
- (4) Request or actually receive payment of any fee in advance of obtaining a loan or other extension of credit when a high likelihood of success has been represented to the consumer by the seller or telephone solicitor;
  - (5) Cause the telephone to ring more than ten times in an outbound telephone call;
  - (6) Engage any consumer repeatedly or continuously with behavior a reasonable person would deem to be annoying, abusive, or harassing;
  - (7) Initiate an outbound telephone call to a consumer, when the person has stated previously that the consumer does not wish to receive telephone calls from that seller or telephone solicitor; provided that the seller or telephone solicitor will not be liable for violating this paragraph if:
    - (A) It has established and implemented written procedures to comply with this paragraph, which procedures shall meet the minimum standards set forth in 47 C.F.R. section 64.1200(e)(2);
    - (B) It has trained its personnel in the procedures established pursuant to subparagraph (A);
    - (C) The seller, or telephone solicitor acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted in compliance with this paragraph; and
    - (D) The call is the result of error; or
  - (8) Initiate an outbound telephone call to a consumer's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the location of the consumer called."

SECTION 39. Section 481P-5, Hawaii Revised Statutes, is amended to read as follows:

"~~[[H]]§481P-5~~ **Exemptions.** This chapter shall not apply to:

- (1) A person who initiates telephone calls to a residence for the sole purpose of polling or soliciting the expression of ideas, opinions, or votes, or a person soliciting solely for a political or religious cause or purpose;
- (2) A securities broker-dealer, salesperson, investment ~~[[adviser]]~~, or investment ~~[[adviser]]~~ representative who is registered with this State to sell securities or who is authorized to sell securities in this State pursuant to federal securities laws, when soliciting over the telephone within the scope of the person's registration;
- (3) A financial institution that is authorized to accept deposits under its chartering or licensing authority where such deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, ~~such as~~ including but not limited to a bank, savings bank, savings and loan association, depository financial services loan company, or credit union, or a nondepository financial services loan company that is licensed or authorized to conduct business in this State by the commissioner of financial institutions, or an affiliate or subsidiary of a financial institution as defined in chapter 412;
- (4) A person or organization that is licensed or authorized to conduct business in this State by the ~~commissioner of insurance~~ insurance commissioner including but not limited to an insurance company and its employees, while engaged in the business of selling or advertising the sale of insurance products or services;
- (5) A college or university accredited by an accrediting organization recognized by the United States Department of Education;

- (6) A person who publishes a catalog of at least fifteen pages, four times a year, with a circulation of at least one hundred thousand, where the catalog includes clear disclosure of sale prices, shipping, handling, and other charges;
- (7) A political subdivision or instrumentality of the United States, or any state of the United States;
- (8) The sale of goods or services by telecommunications or landline (i.e., cable) or wireless video service providers, for which the terms and conditions of the offering, production, or sale are regulated by the public utilities commission or the Federal Communications Commission, or pursuant to chapter 440G, including the sale of goods or services by affiliates of these telecommunications or video service providers[; ~~provided that nothing~~]. Nothing herein shall be construed to preclude or preempt actions brought under any other laws including chapter 480;
- (9) A real estate broker or salesperson who is licensed by this State to sell real estate, when soliciting within the scope of the license; or
- (10) A travel agency that is registered with this State, when engaging in the business of selling or advertising the sale of travel services.”

SECTION 40. Section 481P-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§481P-6**~~]]~~ **Unfair or deceptive act or practice.** Any person who violates this chapter shall be deemed to have engaged in an unfair method of competition ~~[or]~~ and ~~unfair~~ ~~[and]~~ or deceptive act or practice in the conduct ~~[of]~~ any trade or commerce within the meaning of section 480-2.”

SECTION 41. Section 481R-4, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

“~~[[~~**§481R-4**~~]]~~ **Registration requirements**~~[-]; exemptions.~~”

2. By amending subsection (b) to read:

“(b) Warrantor registration records shall be updated annually and shall contain the following information:

- (1) The address of the principal office of the warrantor;
- (2) The name and address of the warrantor’s agent for the service of process in this State if other than the ~~[provider;]~~ warrantor;
- (3) The identities of the warrantor’s executive officer or officers directly responsible for the warrantor’s vehicle protection product business;
- (4) The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this State;
- (5) A copy of each warranty form the warrantor proposes to use in this State; and
- (6) A statement that the warrantor is in compliance with the financial ~~[responsibility]~~ security requirements of section 481R-5 and that details how the warrantor intends to meet the requirements, and proof of compliance with the requirements.”

SECTION 42. Section 481R-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The vehicle protection product warranty shall state the name and address of the insurer and state that if a covered service is not provided by the warrantor before the sixty-first day after the date the consumer provides proof of loss, the

consumer may apply for reimbursement directly to the vehicle protection [~~product's~~ product warrantor's reimbursement insurance company.”

SECTION 43. Section 482-5, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“§482-5 [~~Penalty.] Unlawful use of trade name; penalty.”~~**

SECTION 44. Section 482B-1, Hawaii Revised Statutes, is amended to read as follows:

**“[~~H~~]§482B-1[~~H~~] Short title.** This chapter may be cited as the Uniform [~~Trades~~ Trade Secrets Act.”

SECTION 45. Section 482D-1, Hawaii Revised Statutes, is amended by amending the definition of “article of merchandise” to read as follows:

**“[~~Article]~~ Article or article of merchandise” means any goods, wares, works of art, commodities, or other things which may be lawfully kept or offered for sale, imported into, or exported from the State.”**

SECTION 46. Section 482E-1, Hawaii Revised Statutes, is amended to read as follows:

**“[~~H~~]§482E-1[~~H~~] Purpose and intent.** (a) The purpose of this chapter is to regulate the sale of franchises in the State to minimize losses to the franchisee in cases where the franchisor or the franchisor’s representative has not provided full and complete information regarding:

- (1) [~~the~~] The franchisor-franchisee relationship;
- (2) [~~the~~] The details of the contract between the franchisor and franchisee; and
- (3) [~~the~~] The prior business experience of the franchisor.

(b) It is the intent of the legislature to:

- (1) [~~provide~~] Provide each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered;
- (2) [~~prohibit~~] Prohibit the sale of franchises [~~which~~] that would lead to fraud or a likelihood that the franchisor’s promises would not be fulfilled; and
- (3) [~~protect~~] Protect the franchisor or subfranchisor by providing a better understanding of the relationship between the franchisor or subfranchisor and the franchisee with regard to their business relationship.”

SECTION 47. Section 482E-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**“(a)** It is unlawful for any person to sell a franchise in this State unless such person has presented to the prospective franchisee or the franchisee’s representative, at least seven days prior to the sale of the franchise, an offering circular containing the following information:

- (1) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with franchisees[-];
- (2) The franchisor’s principal business address and the name and address of the franchisor’s agent in the State authorized to receive service of process[-];
- (3) The business form of the franchisor whether corporate, partnership, or otherwise[-];

- (4) Such other information concerning the identity and business experience of persons affiliated with the franchisor including franchise brokers and selling agents as the director may by rule prescribe[-];
- (5) A statement whether any person identified in the offering circular, within ten years preceding the date of the offering circular:
  - (A) Has been found guilty of a felony or held liable in a civil action by final judgment if the civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or
  - (B) Is subject to any currently effective order of the Securities and Exchange Commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment ~~adviser~~ adviser or is subject to any currently effective order of any national security association or national securities exchange (as defined in the Securities ~~and~~ Exchange Act of 1934) suspending or expelling such person from membership ~~of~~ in such association or exchange; or
  - (C) Is subject to any currently effective order or ruling of the Federal Trade Commission or is subject to any currently effective order relating to the business activity as a result of an action brought by any public agency or department.

Such statement shall set forth the court, the date of conviction or judgment, any penalty imposed[-] or damages assessed, or the date, nature, and issue of such order[-];
- (6) A statement of when, where, and how long the franchisor has:
  - (A) Conducted a business of the type to be operated by the franchisees;
  - (B) Has granted franchises for such business; and
  - (C) Has granted franchises in other lines of business[-];
- (7) A recent financial statement of the franchisor, together with a statement of any material changes in the financial condition of the franchisor from the date ~~thereof~~ of the financial statement. The director may ~~describe~~ prescribe:
  - (A) ~~Form~~ The form and content of the financial statements required under this chapter;
  - (B) The circumstances under which consolidated financial statements ~~can~~ may be filed; and
  - (C) The circumstances under which financial statements shall be audited by independent, certified public accountants[-];
- (8) A copy of the typical franchise contract or agreement proposed for use in this State[-];
- (9) A statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases[-];
- (10) A statement describing a payment of fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor including royalties and payments or fees ~~which~~ that the franchisor collects in whole or in part on behalf of a third party or parties[-];
- (11) A statement of the conditions under which the franchise agreement may be terminated or renewed or renewal refused, or repurchased at the option of the franchisor[-];
- (12) A statement of the conditions under which the franchise may be sold, transferred, or assigned[-];

- (13) A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee or subfranchisor is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or the franchisor's designee[-];
- (14) A statement of any restriction or condition imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is limited or required in the goods and services offered by the franchisee[-];
- (15) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or the franchisor's agent or affiliate[-];
- (16) A statement of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part[-];
- (17) A copy of any financial statement prepared for presentation to prospective franchisees or other persons together with a statement setting forth the basis for such statements[-];
- (18) A statement of the number of franchise businesses in each of the following categories ~~[which]~~ that within the three-year period preceding the date of the offering circular have:
  - (A) Been canceled or terminated by either the franchisor or franchisee;
  - (B) Not been renewed by either the franchisor or franchisee;
  - (C) Been reacquired through purchase by the franchisor;
  - (D) Been otherwise reacquired by the franchisor; and
  - (E) Been transferred or sold by the franchisee to persons other than a corporation or other business entity controlled by the transferring or selling franchisee[-];
- (19) A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee[-];
- (20) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory[-];
- (21) A statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from:
  - (A) ~~[the]~~ The use of the public figure in the name or symbol of the franchise; or
  - (B) ~~[the]~~ The endorsement or recommendation of the franchise by the public figure in advertisements[-];
- (22) Such other information as the director may reasonably require[-];
- (23) Such other information as the franchisor may wish to present[-];
- (24) When the person selling the franchise is a subfranchisor, the offering circular shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this subsection[-]; and
- (25) List of names and addresses of all franchisees of the franchisor whose franchise businesses are situated in this State."

SECTION 48. Section 483-1, Hawaii Revised Statutes, is amended to read as follows:

**"§483-1 Definitions; limitations of law.** In this chapter, unless otherwise expressly stated~~[-obligation]~~;



“Obligation” does not include a liability in tort[; obligor].

“Obligor” does not include a person liable for a tort[; obligee].

“Obligee” does not include a person having a right based on a tort. [~~Several obligors~~]

“Several obligors” means obligors severally bound for the same performance.”

SECTION 49. Section 484-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Director” means the director of commerce and consumer affairs.”

2. By amending the definition of “commissioner of securities” to read:

““Commissioner of securities” means the [director of commerce and consumer affairs in the director’s capacity as] commissioner of securities[-] as defined in section 485A-102.”

SECTION 50. Section 484-2, Hawaii Revised Statutes, is amended to read as follows:

“§484-2 [Administrative director.] Administration. This chapter shall be administered by the director of commerce and consumer affairs[; hereinafter called the director].”

SECTION 51. Section 484-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider’s subdivision, this chapter shall not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser’s own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
- (3) Where the division of lands is a leasehold agricultural lot within state agricultural districts on which no dwelling structures are constructed as provided in section [205-4.5(e); 205-4.5(f)];
- (4) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly [f]or[] indirectly, transferred to or otherwise imposed upon the purchaser;
- (5) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale;
- (6) Pursuant to court order;
- (7) By any government or government agency;
- (8) As cemetery lots or interests; or
- (9) Registered as a condominium property regime pursuant to chapter 514B.”

SECTION 52. Section 484-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The application shall be submitted with payment of the appropriate registration[;] and consultant[;] fees and inspection [fees-] expenses.”

SECTION 53. Section 486-77, Hawaii Revised Statutes, is amended to read as follows:

**“~~§486-77 [Tampering with passenger car odometer prohibited; misrepresentation of distance traveled prohibited.] Odometers; prohibitions; exemptions.~~ (a) It shall be unlawful to:**

- (1) Tamper with an odometer, installed in a passenger car, for any purpose. This [section] paragraph shall not be construed to preclude legitimate repair, replacement, or adjustment of an odometer, provided that the administrator may require documentation of such repair, replacement, or adjustment[-];
- (2) Advertise for sale, or sell, rent, lease, or export any passenger car, the odometer of which has been tampered with in such a fashion or manner as to mislead the prospective buyer to believe that the passenger car traveled a lesser distance than it actually has traveled[-];
- (3) Operate a passenger car on any street or highway, knowing that the odometer of the passenger car is disconnected or nonfunctional[-];
- (4) Disconnect, turn back, advance, or reset the odometer of any passenger car with intent to alter the distance indicated on the odometer[-]; or
- (5) Misrepresent the true distance traveled by any passenger car subject to this part, so as to mislead a prospective buyer.

(b) This section shall not preclude the installation, maintenance, repair, or replacement of odometers when such action is necessary to cause compliance with this part. Any such action, however, shall expressly be noted on the certificate of ownership and called to the attention of a prospective buyer, in writing.”

SECTION 54. Section 486-79, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“~~§486-79 Citation and notice to appear[; penalty].~~”**

SECTION 55. Section 486-134, Hawaii Revised Statutes, is amended to read as follows:

**“~~[H]§486-134[H] Optional licensing.~~ The following persons shall not be required, but shall be permitted, to obtain licenses as public measurmasters:**

- (1) A law enforcement or measurement standards officer, or other qualified employee of a state[; city,] or county agency or institution when acting within the scope of the officer’s or employee’s official duties;
- (2) A person weighing property, produce, commodities, or articles that the person, or the person’s employer, [~~if any,~~] is either buying or selling; and
- (3) A person weighing property, produce, commodities, or articles in conformity with the requirements of federal statutes or the statutes of this State relative to [~~warehousepersons~~] warehouse workers or processors.”

SECTION 56. Section 486B-1, Hawaii Revised Statutes, is amended by amending the definition of “person” to read as follows:

““Person” means an individual, corporation, government[;] or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated as-

sociation, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.”

SECTION 57. Section 486H-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “non-refiner marketer” to read:

““Non-refiner marketer” means any person who acquires gasoline for sale in the State [~~of Hawaii,~~] and who is not a refiner located and operating in the State [~~of Hawaii~~], nor an importer owned by or affiliated with, directly or indirectly, [~~by~~] a refiner located and operating in the State [~~of Hawaii~~].”

2. By amending the definition of “retail” as follows:

~~“[“Retail” means the sale of a product for purposes other than resale.]~~

“Retail” means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.”

3. By amending the definitions of “retail service station” and “retail station” to read:

““Retail service station” or “retail station” means a place of business where motor vehicle fuel is sold and delivered into the tanks of motor vehicles[~~;~~

“Retail station” means] and includes a company retail station, a dealer retail station, and an independent retail station.”

4. By amending the definition of “secondary brand” to read:

““Secondary brand” means a trade name or trademark, other than a major brand, used to identify a [~~manufacturer’s~~] company retail [~~service~~] station.”

5. By repealing the definition of “self-serve basis”:

~~“[“Self-serve basis” means that the retail station allows customers to dispense gasoline into vehicles.]”~~

SECTION 58. Section 486H-4, Hawaii Revised Statutes, is amended to read as follows:

~~“[§486H-4]—Exceptions.~~ **Wrongful termination, cancellation, or non-renewal: exception to actions.** No action may be brought under section 486H-2 in connection with the termination, cancellation, or nonrenewal of a franchise if the franchise agreement provides for the binding arbitration of disputes arising under the agreement, including disputes related to the termination, cancellation, or nonrenewal of the franchise, in accordance with chapter 658A and the rules of the American Arbitration Association.”

SECTION 59. Section 486H-10.4, Hawaii Revised Statutes, is amended to read as follows:

**“§486H-10.4 Restrictions on manufacturers or jobbers in operating service stations; lease rent controls[; definitions].** (a) Beginning August 1, 1997, no manufacturer or jobber shall convert an existing dealer retail station to a company retail station; provided that nothing in this section shall limit a manufacturer or jobber from:

- (1) Continuing to operate any company [~~operated~~] retail [~~service stations~~] station legally in existence on July 31, 1997;
- (2) Constructing and operating any new retail service [~~stations~~] station as a company retail [~~stations~~] station constructed after August 1, 1997, subject to subsection (b); or
- (3) Operating a former dealer retail station for up to twenty-four months until a replacement dealer can be found if the former dealer vacates the [~~service~~] retail station, cancels the franchise, or is properly terminated or not renewed.

(b) No new company retail station shall be located within one-eighth mile of a dealer retail station in an urban area, and within one-quarter mile in other areas.

(c) All leases as part of a franchise as defined in section 486H-1, existing on August 1, 1997, or entered into thereafter, shall be construed in conformity with the following:

- (1) Such renewal shall not be scheduled more frequently than once every three years; and
- (2) Upon renewal, the lease rent payable shall not exceed fifteen per cent of the gross sales, except for gasoline, which shall not exceed fifteen per cent of the gross profit of product, excluding all related taxes by the dealer ~~[operated]~~ retail ~~[service]~~ station as defined in section 486H-1 ~~[and 486H-10.4]~~ plus, in the case of a retail service station at a location where the manufacturer or jobber is the lessee and not the owner of the ground lease, a percentage increase equal to any increase ~~[which] that~~ the manufacturer or jobber is required to pay the lessor under the ground lease for the service station. ~~[For the purposes of this subsection, "gross amount" means all monetary earnings of the dealer from a dealer-operated retail service station after all applicable taxes, excluding income taxes, are paid.]~~

The provisions of this subsection shall not apply to any existing contracts that may be in conflict with its provisions.

(d) Nothing in this section shall prohibit a gasoline dealer from selling a retail service station in any manner."

SECTION 60. Section 486H-10.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[H]§486H-10.5[H]~~ **Violation; penalties.** Any person who violates section ~~[486H-10]~~ 486H-10.4 shall be assessed a civil penalty of \$1,000 per day for each violation."

SECTION 61. Section 486H-11, Hawaii Revised Statutes, is amended to read as follows:

~~"[H]§486H-11[H]~~ **Enforcement of prohibition.** (a) The attorney general shall commence a civil action to enforce section ~~[486H-10,]~~ 486H-10.4 by seeking injunctive or any other appropriate relief. The civil action shall be brought in the circuit court of the circuit where the alleged violation occurred, or where the defendant resides or is doing business.

(b) Any person who is injured in ~~[another]~~ that person's business or property by the violation of section ~~[486H-10,]~~ 486H-10.4 may bring a civil action for damages or injunctive relief, or both, against the person violating section ~~[486H-10,]~~ 486H-10.4. If the plaintiff prevails, the plaintiff shall be awarded reasonable ~~[attorneys]~~ attorneys' and expert witness fees; provided that if a court awards only nominal damages to the plaintiff, those fees, in the court's discretion, need not be awarded to the plaintiff. Any action brought under this subsection shall be brought in the circuit court of the circuit where the alleged violation occurred, or where the defendant resides or is doing business."

SECTION 62. Section 486K-1, Hawaii Revised Statutes, is amended by amending the definitions of "guest", "hotel/hotel-condo", and "keeper" to read as follows:

""Guest" means a person who is registered at the hotel and to whom a bedroom is assigned. The term "guest" shall include not only the guest, but the members of the guest's family and other persons who accompany the guest.

~~["Hotel/hotel-condo"]~~ "Hotel", "hotel-condominium" or "condominium-hotel" means an establishment consisting of any building or structure used primarily for the business of providing for consideration transient accommodation lodging facilities and that furnishes, as part of its routine operations, one or more customary lodging services, other than living accommodations and the use of furniture and fixtures, including~~[;]~~ but not limited to~~[;]~~ restaurant facilities, or room attendant, bell, telephone switchboard, laundering, or concierge services, and is subject to the transient accommodations tax under chapter 237D.

~~["Keeper"]~~ "Hotelkeeper" or "keeper" includes any ~~[person,]~~ individual, firm, or corporation actually operating a hotel.

SECTION 63. Section 486K-2, Hawaii Revised Statutes, is amended by amending its title to read as follows:

~~["§486K-2"]~~ **Hotelkeeper's lien on baggage, etc., of guests; summary ejection of delinquents.**

SECTION 64. Section 486K-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~(a)~~ If the keeper of any hotel provides a safe or vault in its office ~~[thereof,]~~ at the hotel for the safekeeping of any valuables belonging to the guests of the hotel, and prominently posts a notice in the room or rooms occupied by the guest stating that a safe or vault is provided in which valuables may be deposited and if any guest neglects to deliver valuables to the person in charge of the safe or vault, the keeper of the hotel shall not be liable in any sum for any loss of valuables sustained by the guest by theft or otherwise unless the loss is due to the negligence or fault of the keeper of the hotel. If the guest delivers valuables to the person in charge of the office for deposit in the safe or vault, the keeper shall not be liable for any loss ~~[thereof]~~ sustained by the guest~~[;]~~ by theft or otherwise~~[;]~~ in any sum exceeding \$500; provided that the keeper's liability is limited to \$500 only if:

- (1) ~~[the]~~ The keeper gives a receipt for the valuables on a form which states, in type large enough to be clearly noticeable, that the keeper is not liable for any loss exceeding \$500 except by special agreement in writing in which the keeper agrees to accept liability for losses in excess of \$500; and
- (2) ~~[the]~~ The loss is not due to the negligence or fault of the keeper of the hotel.

The keeper may accept liability for losses in excess of \$500 by special agreement in writing between a guest and the keeper or the keeper's duly authorized representative."

SECTION 65. Section 486K-5, Hawaii Revised Statutes, is amended to read as follows:

~~["§486K-5"]~~ **Hotelkeeper's liability for personal property.** (a) No ~~[keeper of any hotel]~~ hotelkeeper shall be liable in any sum to any guest of the hotel for the loss of wearing apparel, goods, merchandise, or other personal property not mentioned in section 486K-4, unless it appears that the loss occurred through the fault or negligence of the ~~[keeper.]~~ hotelkeeper.

(b) ~~[Nor shall any keeper]~~ No hotelkeeper shall be liable in any event in any sum for the loss of any article or articles of wearing apparel, cane, umbrella, satchel, valise, bag, box, bundle, or other chattel belonging to any guest of, or in, any hotel, and not within a room or rooms assigned to the guest, unless the same is specially ~~[entrusted]~~ entrusted to the care and custody of the keeper or the keeper's duly authorized agent~~[, and if]~~. If so specially ~~[entrusted]~~ entrusted with any such article belonging to the guest, the keeper shall not be liable for the loss of the ~~[same]~~ article

in any sum exceeding \$500 [~~except~~]; provided that the keeper's liability may be in excess of \$500 by special agreement in writing with the keeper or the keeper's duly authorized representative."

SECTION 66. Section 486K-6, Hawaii Revised Statutes, is amended to read as follows:

"~~[(H)§486K-6(H)]~~ Hotelkeeper's [responsibility] liability in case of fire, etc. ~~[The keeper of any hotel]~~ A hotelkeeper shall only be liable to any guest of the hotel[;] for ordinary and reasonable care in the custody of money, jewels, bank notes, precious stones, transportation tickets, negotiable or valuable papers, ornaments, baggage, wearing apparel, or other chattels or property belonging to any guest, whether specially [~~intrusted~~] entrusted to the keeper or the keeper's agent, or deposited in the safe of the hotel, for any loss occasioned by fire or by any other cause or force[;] over which the [~~proprietor~~] hotelkeeper had no control."

SECTION 67. Section 487-13, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**"§487-13 [~~Penalties for unlicensed~~] Unlicensed acts[-]; penalties."**

2. By amending subsection (c) to read:

"(c) Any contract for the furnishing of commodities or services by an unlicensed, unregistered, or [~~uncertified~~] uncertificated person shall be void and shall prevent such person from recovering the contract price or the reasonable value thereof."

SECTION 68. Section 487J-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided in subsection (b), a business or government agency may not do any of the following:

- (1) Intentionally communicate or otherwise make available to the general public an individual's entire social security number;
- (2) Intentionally print or imbed an individual's entire social security number on any card required for the individual to access products or services provided by the [~~person or entity~~]; business or government agency;
- (3) Require an individual to transmit the individual's entire social security number over the [~~internet~~]; Internet, unless the connection is secure or the social security number is encrypted[;]. For purposes of this paragraph, "encrypted" means that an algorithmic process has been used to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key;
- (4) Require an individual to use the individual's entire social security number to access an internet website, unless a password or unique personal identification number or other authentication device is also required to access the internet website; [~~and~~] or
- (5) Print an individual's entire social security number on any materials that are mailed to the individual, unless the materials are employer-to-employee communications, or where specifically requested by the individual."

SECTION 69. Section 487N-1, Hawaii Revised Statutes, is amended by amending the definition of "encryption" to read as follows:

""Encryption" or "encrypted" means the use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key."

SECTION 70. Section 487N-2, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The following businesses shall be deemed to be in compliance with this section:

- (1) A financial institution that is subject to the ~~[Federal]~~ federal Interagency Guidance on Response Programs for Unauthorized Access to ~~[Consumer]~~ Customer Information and Customer Notice published in the Federal Register on March 29, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, or subject to 12 C.F.R. Part 748, and any revisions, additions, or substitutions relating to ~~[said]~~ the interagency guidance; and
- (2) Any health plan or healthcare provider that is subject to and in compliance with the standards for privacy or individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.”

SECTION 71. Section 487R-1, Hawaii Revised Statutes, is amended by amending the definition of “personal information” to read as follows:

““Personal information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (1) Social security number;
- (2) Driver’s license number or Hawaii identification card number; or
- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual’s financial account.

“Personal information” shall not include publicly available information that is lawfully made available to the general public from federal, state, or local government records. “Encrypted”, as used in this definition means the use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key.”

SECTION 72. Section 487R-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A business or government agency may satisfy its obligation hereunder by exercising due diligence and entering into a written contract with, and thereafter monitoring compliance by, another party engaged in the business of ~~[record]~~ records destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include one or more of the following:

- (1) Reviewing an independent audit of the disposal business’ operations or its compliance with this ~~[statute or its equivalent;]~~ chapter;
- (2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review; or
- (3) Reviewing and evaluating the disposal business’ information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the disposal business.”

SECTION 73. Section 488-1, Hawaii Revised Statutes, is amended to read as follows:

“**§488-1 Definitions.** As used in this chapter:

~~[(1)]~~ “Department” means the department of commerce and consumer affairs.

~~[(2)]~~ “Plan administrator” means those persons who have discretionary authority for the management of the plan or for the collection, management, or disbursement of plan moneys.

~~[(3)]~~ “Prepaid legal service plan” [~~“Plan”~~] or “plan” means a group legal service plan in which the cost of the services are prepaid by the group member or by some other person or organization in the member’s behalf.

~~[A group]~~ “Group legal service plan” is a plan by which legal services are rendered to individual members of a group identifiable in terms of some common interest.”

SECTION 74. Section 488-2, Hawaii Revised Statutes, is amended to read as follows:

**~~[(H)§488-2(H)]~~ Applicability; other statutes, rules of court.** (a) This chapter shall apply to all plans in the State other than:

- (1) Plans in which either the group or the plan administrator is otherwise subject to regulation under chapter 431 or ~~[433.]~~ 432;
- (2) Plans in which any party to the plan is the federal government or any agency thereof~~[-]; or~~
- (3) Any employer-employee plan ~~[which]~~ that is subject to the federal Employee Retirement Income Security Act of 1974, Public Law 93-406.

(b) The operation of all plans subject to this chapter shall also be subject to chapters 480, ~~[481, part I,]~~ part I of chapter 481, 481A, and 481B, and other provisions of law ~~[which]~~ that may be applicable. Chapters 431~~[-]~~, ~~433, and 434]~~ and 432 shall not apply to any plans or the operations thereof ~~[which]~~ that are subject to this chapter, except as provided in sections 488-5 and 488-6.

(c) No plan subject to this chapter shall contravene rules of court adopted by the Hawaii supreme court.”

SECTION 75. Section 488-5, Hawaii Revised Statutes, is amended to read as follows:

**~~[(H)§488-5(H)]~~ Annual exhibits; examination by director.** (a) Each plan shall file with the director of commerce and consumer affairs within thirty days after the end of its fiscal year a statement under oath in such form as the director prescribes containing:

- (1) A statement setting forth the total amount of gross receipts and expenditures of the plan during its fiscal year;
- (2) The assets and liabilities of the plan at the close of its fiscal year; and
- (3) The profit and loss of the plan during its fiscal year.

(b) The powers, authorities, and duties relating to examinations vested in and imposed upon the insurance commissioner under chapter 431 are extended to and imposed upon the director in respect to examinations of the plans; provided that no examination shall attempt to obtain or inspect written or oral information or documents in violation of the ~~[attorney-client privilege]~~ rules for client-lawyer confidentiality as ~~[it is]~~ contained in the ~~[Code of Professional Responsibility]~~ Hawaii Rules of Professional Conduct adopted by the supreme court.”

SECTION 76. Section 488-6, Hawaii Revised Statutes, is amended to read as follows:

**~~[(H)§488-6(H)]~~ Investments of certain plans.** No plan promising or offering to pay for legal services in an amount equal to or in excess of \$25 a year shall invest any of its assets other than as authorized and provided for in respect to domestic in-



## ACT 19

insurance companies and societies under ~~[chapter]~~ chapters 431[7] and 432, which provisions are hereby extended to and made applicable to prepaid legal service plans.”

SECTION 77. Section 489D-4, Hawaii Revised Statutes, is amended by amending the definition of “permissible investments” to read as follows:

““Permissible investments” means:

- (1) Cash;
- (2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;
- (3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, known as bankers’ acceptances, that are eligible for purchase by member banks of the Federal Reserve System;
- (4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;
- (5) Investment securities that are obligations of the United States, its agencies, or its instrumentalities, obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality, or any political subdivision thereof;
- (6) Shares in a money market mutual fund, interest-bearing bills, notes, or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, mutual funds primarily composed of these securities, or a fund composed of one or more permissible investments as set forth in ~~[this subsection;]~~ paragraphs (1) to (5);
- (7) Any demand borrowing agreement or agreements made with a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;
- (8) Receivables that are due to a licensee from its authorized delegates pursuant to a contract under section 489D-21, that are not past due or doubtful of collection; or
- (9) Any other investments or security device approved by the commissioner.”

SECTION 78. Section 489E-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall apply to electronic records and electronic signatures relating to a transaction. ~~[A transaction subject to this chapter shall be subject to other applicable substantive law.]”~~

SECTION 79. This Act shall be amended to conform to all other acts passed by the legislature during the regular session of 2008, whether enacted before or after the effective date of this Act, unless the other act specifically provides otherwise.

SECTION 80. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 81. This Act shall take effect upon its approval.

(Approved April 17, 2008.)

## ACT 20

S.B. NO. 3105

A Bill for an Act Relating to Public Agency Meetings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 92-3.1, Hawaii Revised Statutes, is amended to read as follows:

~~“[§92-3.1] Limited meetings. (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board’s business at which public attendance is not practicable, and the [attorney general] director of the office of information practices concurs, the board may hold a limited meeting [in] at that location[, which is] that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting [at the dangerous location]:~~

- (1) ~~The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting [at the dangerous location] and specifies [the reasons for its determination] that the location is dangerous to health or safety[;] or that the on-site inspection is necessary and public attendance is impracticable;~~
  - (2) ~~Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1) [and to conduct the meeting]; and~~
  - (3) ~~Notice of the limited meeting is provided in accordance with section 92-7.~~
- (b) ~~At all limited meetings, the board shall:~~
- (1) ~~Videotape the meeting, unless the requirement is waived by the [attorney general,] director of the office of information practices, and comply with all requirements of section 92-9;~~
  - (2) ~~Make the videotape available at the next regular meeting; and~~
  - (3) ~~Make no decisions at the meeting.”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 18, 2008.)

## ACT 21

H.B. NO. 3106

A Bill for an Act Relating to Graduates of Foreign Acupuncture Programs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 436E-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding subsections (b) and (c), effective September 1, 2000, before any applicant shall be eligible [for the] to take the licensing examination, the applicant shall furnish satisfactory proof to the board that the applicant has completed a formal acupuncture program and has received a total of [not less than] at least two thousand, one hundred seventy-five hours of academic and clinical training consisting of an academic program of [not less than] at least one thousand, five

## ACT 22

hundred fifteen hours in the science of acupuncture (traditional oriental medicine) and a clinical training program of [~~not less than~~] at least six hundred sixty hours under the supervision of a licensed acupuncturist, which shall result in the award of a certificate or diploma [~~at~~]. For applicants who graduated from an institute, school, or college<sup>(5)</sup> located in the United States or any territory under the jurisdiction of the United States, the institute, school, or college shall be accredited or recognized as a candidate for accreditation by any acupuncture or oriental medicine accrediting body recognized by the United States Department of Education [~~or at~~]. For applicants who graduated from a foreign institute, school, or college with a formal program in the science of acupuncture, the applicant, at the applicant's own expense, shall have the applicant's transcripts and curriculum evaluated by a board approved and designated professional evaluator who shall make a determination whether the transcripts and curriculum are at least equivalent to that of the United States accredited acupuncture program, and that the foreign institute is licensed, approved, or accredited by the appropriate governmental authority or an agency recognized by a governmental authority in [~~that~~] the respective foreign jurisdiction and whose curriculum is approved by the board."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 18, 2008.)

## ACT 22

S.B. NO. 2258

A Bill for an Act Relating to the Wireless Enhanced 911 Board.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the wireless enhanced 911 board is unique among state boards and commissions by allowing a quorum to be established either in person or by proxy, and allowing a member to vote by written proxy submitted to the board. According to the posted minutes for the monthly meetings held from January through November 2007, proxy designations were assigned at all eleven meetings. The legislature further finds that of the six members required for a quorum, three of the six members are statutorily required to be representatives of the wireless providers and three are statutorily required to be representatives of public safety answering points. Allowing a vote by proxy, while requiring specific representation, is contrary to the intent of representation.

The purpose of this Act is to require that quorum be met by a member's physical presence at a meeting, to permit quorum to be met by the physical presence of any six members of the board, and to delete the proxy authorization for quorum and for voting.

SECTION 2. Section 138-2, Hawaii Revised Statutes, is amended to read as follows:

**"§138-2 Wireless enhanced 911 board.** (a) There is created within the department of accounting and general services, for administrative purposes, a wireless enhanced 911 board consisting of eleven voting members; provided that the membership shall consist of:

- (1) The comptroller or the comptroller's designee;

- (2) Three representatives from wireless providers, who shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;
- (3) One representative each from the public safety answering points for Oahu, Hawaii, Kauai, Maui, and Molokai, who shall be appointed by the governor, as provided in section 26-34, except as otherwise provided by law, from a list of five names submitted by each respective public safety answering point;
- (4) The consumer advocate or the consumer advocate's designee; and
- (5) One representative of the current wireline provider of enhanced 911.

(b) Six members [~~either in person or by proxy, pursuant to subsection (g),~~] shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the board [~~]; provided that three of the six members constituting a quorum shall be representatives of the wireless providers and three shall be representatives of public safety answering points, except as provided in section 138-8(c).~~]

(c) The chairperson of the board shall be elected by the members of the board by simple majority and shall serve a term of one year.

(d) The board shall meet upon the call of the chairperson, but not less than quarterly.

(e) The members representing wireless providers shall be appointed by the governor for terms of two years, except that terms of the two members initially appointed shall be for eighteen months.

(f) Each member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall apply only insofar as it relates to succession, vacancies, and suspension of board members, and as provided in subsection (a).

~~[(g) A member may vote by proxy submitted in writing to the board.~~

~~(h)~~ (g) The members shall serve without compensation. Members shall be entitled to reimbursements from the wireless enhanced 911 fund for reasonable traveling expenses incurred in connection with the performance of board duties.

~~(i)~~ (h) The board or its chairperson, with the approval of the board, may retain independent, third-party accounting firms, consultants, or other third party to:

- (1) Create reports, make payments into the fund, process checks, and make distributions from the fund, as directed by the board and as allowed by this chapter; and
- (2) Perform administrative duties necessary to administer the fund or oversee operations of the board, including providing technical advisory support.

~~(j)~~ (i) The board shall develop reasonable procedures to ensure that all wireless providers receive adequate notice of board meetings and information concerning board decisions.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 18, 2008.)

A Bill for an Act Relating to Nursing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 457-7, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Applicants applying for a license to practice as a registered nurse by examination shall submit to the board proof of eligibility. Applicants shall be eligible to apply for a license by examination if they have:

- (1) Graduated from a registered nursing program at an educational institution in the United States or any territory or possession under the jurisdiction of the United States and are qualified as determined by the board through rules adopted pursuant to chapter 91; [ø]
- (2) Graduated from a registered nursing program at an educational institution in a foreign jurisdiction[;] and have had their transcripts evaluated by professional evaluators designated by the board and are considered qualified as determined by the board through rules adopted pursuant to chapter 91[-]; or
- (3) Graduated with a bachelor’s degree and satisfactorily completed the pre-licensure portion of a master’s entry program in nursing at an accredited school of nursing in the United States or any territory or possession under the jurisdiction of the United States that is recognized by the board or other state boards of nursing and are qualified as determined by the board.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 2008.)

A Bill for an Act Relating to Workers’ Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-430, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-430 Coverage for workers’ compensation.** Whenever a student participating in a school-approved work-based learning program sponsored by the department of education or the University of Hawaii undertakes to perform work for a private or public employer as part of the student’s work-based learning program, whether paid or unpaid, the State shall be deemed to be the responsible employer for the purposes of workers’ compensation coverage, that shall be the student’s exclusive remedy to the same extent as provided for in chapter 386 as against the State and the private employer participating in the program.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 2008.)

## ACT 25

H.B. NO. 647

A Bill for an Act Relating to Energy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 196-18, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 26

H.B. NO. 2523

A Bill for an Act Relating to the Land Use Commission.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 205-17, Hawaii Revised Statutes, is amended to read as follows:

**“§205-17 Land use commission decision-making criteria.** In its review of any petition for reclassification of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards;
- (3) The impact of the proposed reclassification on the following areas of state concern:
  - (A) Preservation or maintenance of important natural systems or habitats;
  - (B) Maintenance of valued cultural, historical, or natural resources;
  - (C) Maintenance of other natural resources relevant to Hawaii’s economy, including agricultural resources;
  - (D) Commitment of state funds and resources;
  - (E) Provision for employment opportunities and economic development; and
  - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;
- (4) The standards and criteria for the reclassification or rezoning of important agricultural lands in section 205-50; ~~and~~
- (5) The county general plan and all community, development, or community development plans adopted pursuant to the county general plan, as they relate to the land that is the subject of the reclassification petition; and

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~~(5)~~ (6) The representations and commitments made by the petitioner in securing a boundary change.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 2008.)

ACT 27

H.B. NO. 2696

A Bill for an Act Relating to the Board of the Judiciary History Center.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 6F-3, Hawaii Revised Statutes, is amended to read as follows:

~~[[§6F-3]]~~ **Executive board.** (a) The responsibility for general administration and the proper operation of the center shall be vested in an executive board to be known as the board of the judiciary history center. The board shall have power in accordance with law to formulate policy and to exercise control over the center. The board shall consist of five members appointed by the chief justice~~[5]~~; provided that three members shall be selected from a list of seven candidates submitted by the friends of the judiciary history center. The term of each member shall be for four years, commencing on July 1, and expiring on June 30; provided that of the five members appointed for terms commencing July 1, 1990, two members shall serve for four years, two members shall serve for three years, and one member shall serve for two years. The members shall serve without compensation but they shall be reimbursed for travel and other necessary expenses incurred in the performance of their official duties.

(b) A vacancy on the board shall be filled for the remainder of the unexpired term or, if expired, for a new term by the chief justice; provided that a vacancy in any one of the three positions originally appointed by the chief justice from a list submitted by the friends of the judiciary history center shall be filled by the chief justice from a list of three candidates submitted by the friends of the judiciary history center.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 2008.)

## ACT 28

S.B. NO. 2401

A Bill for an Act Relating to Condominiums: Making Various Technical Amendments to the Hawaii Revised Statutes for the Purpose of Correcting Errors and References, and Clarifying Language.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. In 1961, Hawaii became the first state in the nation to enact a comprehensive framework recognizing and incorporating the creation of condominium property regimes (Act 180, Session Laws of Hawaii 1961). Codified as chapter 170A, Revised Laws of Hawaii, this landmark legislation now stands as chapter 514A, Hawaii Revised Statutes.

The four decades that passed since the establishment of the Hawaii Horizontal Property Regimes Act have seen enormous economic growth and population dispersal on a very limited land base, resulting in a concomitant explosion in the creation of condominiums throughout the islands that has fostered debate over the fundamental issues of housing needs, land tenure, and property rights in the State. The legislature, through the years, has responded to ever increasing demands to clarify these issues as they relate to condominiums through piecemeal amendments to chapter 514A, Hawaii Revised Statutes, resulting in a cumbersome and overwhelming document.

Recognizing the need to clarify and update the condominium laws in the State, in 2000 the legislature mandated the real estate commission of the department of commerce and consumer affairs to conduct a comprehensive review and recodification of chapter 514A (Act 213, Session Laws of Hawaii 2000, and Act 131, Session Laws of Hawaii 2003).

The results of the commission's study were reported to the legislature in December, 2003, and included proposed legislation (S.B. 2210 (2004)) that repealed the existing chapter 514A, replaced it with a new comprehensive condominium law, and made amendments to existing statutes to conform to this change. The final version of that measure that passed the legislature and was signed into law, however, veered significantly from the original vision of the real estate commission's study. Act 164, Session Laws of Hawaii 2004, not only removed parts of the new condominium law, but also retained parts of the existing chapter 514A. The legislature again revisited the issue of condominium regulation in the 2005, 2006, and 2007 sessions, fine-tuning the "new" condominium law (codified as chapter 514B) and reinstating the "old" condominium law (chapter 514A) resulting in two separate chapters on condominiums in the Hawaii Revised Statutes.

The purpose of this Act is to amend various sections of the Hawaii Revised Statutes to reflect the existence of the two chapters on condominiums.

The substantive portions of this Act are divided into three parts:

- Part II amends sections of the Hawaii Revised Statutes amended by Act 164, Session Laws of Hawaii 2004, to reinstate references to chapter 514A and its various sections deleted by that Act;
- Part III amends statutes that have been enacted or amended since 2004 and that refer only to chapter 514B and its sections, to include references to chapter 514A and its sections; and
- Part IV amends statutes to conform terminology differences found between chapters 514A and 514B, Hawaii Revised Statutes.



## PART II

SECTION 2. The real estate commission's final report to the legislature on the recodification of chapter 514A, Hawaii Revised Statutes, recommended that the existing condominium law be repealed and replaced with a new chapter setting forth updated statutory provisions. Senate Bill 2210 (2004) incorporated the commission's recommendations. That bill not only proposed the repeal of chapter 514A and the enactment of its replacement chapter, but also made numerous amendments to existing sections of the Hawaii Revised Statutes to change references to chapter 514A and its sections to reflect the new chapter (codified as chapter 514B, Hawaii Revised Statutes) and its sections. The final version of S.B. 2210 that was enacted (Act 164, Session Laws of Hawaii 2004) retained both the "old" chapter 514A and the "new" chapter 514B; however, the amendments to other sections of the Hawaii Revised Statutes in the original proposed language to change references to chapter 514A and its sections to chapter 514B and its sections, were not corrected to reflect this two-chapter scheme. Thus, the various statutes amended by Act 164 apply only to condominiums under chapter 514B, and not to condominiums under chapter 514A.

The purpose of this part is to amend sections of the Hawaii Revised Statutes amended by Act 164, Session Laws of Hawaii 2004, to reinstate references to chapter 514A and its various sections, deleted by that Act.

SECTION 3. Section 26-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) The board of acupuncture, board of public accountancy, board of barbering and cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of massage therapy, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners in optometry, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, 514B, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes."

2. By amending subsection (o) to read:

"(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactiva-

tion, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, the condominium management education fund, section 514A-131, and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15); or
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

3. By amending subsection (o) to read:

"(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together

with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section [§]485A-202(a)(26)[§] shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, the condominium management education fund, section 514A-131, and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485A has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section [§]485A-202(a)(26)[§] has complied with chapter 514E or section [§]485A-202(a)(26)[§];
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or

(5) Any person subject to chapter 467B has complied with that chapter; and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses.”

SECTION 4. Section 237-16.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) As used in this section:

“Lease” means the rental of real property under an instrument in writing by which one conveys real property for a specified term and for a specified consideration, and includes the written extension or renegotiation of a lease, and any holdover tenancy.

“Lessee” means one who holds real property under lease, and includes a sublessee.

“Lessor” means one who conveys real property by lease, and includes a sublessor.

“Real property or space” means the area actually rented and used by the lessee, and includes common elements as defined in section 514A-3 or 514B-3.

“Sublease” includes the rental of real property which is held under a lease and is made in a written document by which one conveys real property for a specified term and for a specified consideration. ~~[Sublease]~~ A sublease includes the written extension or renegotiation of a sublease and any holdover tenancy under the written sublease.

“Sublessee” means one who holds real property under a sublease.

“Sublessor” means one who conveys real property by sublease.”

SECTION 5. Section 237D-1, Hawaii Revised Statutes, is amended by amending the definitions of “lease”, “let”, or “rental” and “transient accommodations” to read as follows:

““Lease”, “let”, or “rental” means the leasing or renting of living quarters or sleeping or housekeeping accommodations in hotels, apartment hotels, motels, condominium property regimes or apartments defined in chapter 514A or units defined in chapter 514B, cooperative apartments, rooming houses, or other places in which lodgings are regularly furnished to transients for a consideration, without transfer of the title of such property.

“Transient accommodations” ~~[mean]~~ means the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient for less than one hundred eighty consecutive days for each letting by a hotel, apartment hotel, motel, condominium property regime or apartment as defined in chapter 514A or unit as defined in chapter 514B, cooperative apartment, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients for consideration.”

SECTION 6. Section 302A-1312, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of education shall prepare a six-year program and financial plan for school repair and maintenance that shall be:

(1) Based on:

- (A) Estimated preventive and scheduled maintenance costs;
- (B) Budgeted recurring maintenance;
- (C) Health and safety requirements; and

- (D) Legal mandates;
- (2) Insofar as is practical, prepared in accordance with the principles and procedures contained in section 514A-83.6 or 514B-148; and
- (3) Submitted initially to the legislature not less than thirty days prior to the convening of the 2002 regular session, with annual funding requirements for the physical plant operations and maintenance account submitted not less than thirty days prior to the convening of the 2002 regular session and each regular session thereafter;

provided that the governor may incorporate the six-year program and financial plan required by this subsection into the six-year program and financial plan required by section 37-69, if the plan required by this subsection is incorporated without reductions or restrictions.”

SECTION 7. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee’s conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual’s criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to ~~[section]~~ sections 78-2.7 and 831-3.1 ~~[and section 78-2.7]~~;
- (2) The department of education pursuant to section 302A-601.5;
- (3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-2.7;
- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to ~~[section]~~ sections 302C-1 and 378-3(8) ~~[and section 302C-1]~~;
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. §44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);
- (13) The department of human services pursuant to sections 346-97 and 352-5.5;
- (14) The public library system pursuant to section 302A-601.5;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 4211-12;

- (17) The board of directors of an association of [apartment] owners[;] under chapter 514A or 514B, or the manager of a condominium project pursuant to section 514A-82.1 or 514B-133; and
- (18) The department of health pursuant to section 321-15.2.”

SECTION 8. Section 414D-311, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-311 Superseding chapters.** In the event of any conflict between the provisions of this chapter and the provisions of chapter 421J, 514A, 514B, or 514E, the provisions of chapter 421J, 514A, 514B, or 514E shall supersede and control the provisions of this chapter.”

SECTION 9. Section 421I-9, Hawaii Revised Statutes, is amended to read as follows:

“**§421I-9 Mediation and arbitration of disputes.** At the request of any party, any dispute concerning or involving one or more shareholders and a corporation, its board of directors, managing agent, resident manager, or one or more other shareholders relating to the interpretation, application, or enforcement of this chapter or the corporation’s articles of incorporation, bylaws, or rules adopted in accordance with its bylaws shall be submitted first to mediation. When all reasonable efforts for mediation have been made and the dispute is not settled either in conference between the parties or through mediation, the dispute shall be submitted to arbitration in the same manner and subject to the same requirements, to the extent practicable, which now apply to condominium property regimes under part VII of chapter 514A or section 514B-162.”

SECTION 10. Section 467-1, Hawaii Revised Statutes, is amended by amending the definition of “hotel” to read as follows:

““Hotel” includes a structure or structures used primarily for the business of providing transient lodging for periods of less than thirty days and which furnishes customary hotel services including[;] but not limited to[;] front desk, restaurant, daily maid and linen service, bell service, or telephone switchboard; provided that for the purposes of this chapter, apartments or units in a project as defined by section 514A-3 or 514B-3 that provide customary hotel services shall be excluded from the definition of hotel. The definition of hotel as set forth in this section shall be in addition to and supplement the definition of “hotel” as set forth in the various county ordinances.”

SECTION 11. Section 484-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider’s subdivision, this chapter shall not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser’s own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
- (3) Where the division of lands is a leasehold agricultural lot within state agricultural districts on which no dwelling structures are constructed as provided in section 205-4.5(e);
- (4) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct

- a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly [~~or~~] indirectly, transferred to or otherwise imposed upon the purchaser;
- (5) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale;
- (6) Pursuant to court order;
- (7) By any government or government agency;
- (8) As cemetery lots or interests; or
- (9) Registered as a condominium property regime pursuant to chapter 514A or 514B.”

SECTION 12. Section 501-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No new certificate of title shall be entered, and no memorandum shall be made upon any certificate of title by the registrar or assistant registrar, except:

- (1) In pursuance of any deed or other voluntary instrument;
- (2) Upon the recording of a certificate of merger that merges two or more condominium projects as provided by section 514A-19 or 514B-46;
- (3) Upon the recording of an amendment to a declaration of condominium property regime which alters the percentage interest of the respective apartment or unit owners in the common [~~element;~~] elements;
- (4) In cases expressly provided for in this chapter; or
- (5) Upon the order of the court, for cause shown.”

SECTION 13. Section 502C-1, Hawaii Revised Statutes, is amended by amending the definitions of “common elements” or “common area”, “declaration”, and “townhouse” to read as follows:

““Common elements” or “common area” means:

- (1) The same as “common elements” as defined in section 514A-3 or 514B-3; and
- (2) Real property within a planned community that is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.

“Declaration” means:

- (1) The instrument by which property is submitted to chapter 514A or 514B, as provided in [~~that chapter,~~] those chapters, and such declaration as from time to time amended; and
- (2) Any recorded instrument, however denominated, that imposes on an association maintenance or operational responsibilities for the common area and creates the authority in the association to impose on units, or on the owners or occupants of the units, any mandatory payment of money as a regular annual assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas, including any amendment or supplement to the instrument.

“Townhouse” means a series of individual apartments or units having architectural unity and common elements, with each apartment or unit extending from ground to roof or from the first or second floor to roof, and where apartments or units may share a common wall or be freestanding structures, including townhouse projects that are created pursuant to chapters 514A, 514B, and 421J, as well as projects that are not created pursuant to those chapters but are governed by an association;

provided that “townhouse” shall not include any apartments or units located in a building of more than three stories.”

SECTION 14. Section 514C-22, Hawaii Revised Statutes, is amended to read as follows:

**“§514C-22 Power of association of [apartment] owners to negotiate, purchase, and sell lessor’s interest.** (a) The association of [apartment] owners under chapter 514A or 514B may purchase the lessor’s interest in the condominium project; provided that the declaration of condominium property regime shall either contain or be amended to include a provision authorizing the board of directors to effectuate such a purchase. If the lessor is also a condominium unit lessee, the lessor’s lessee interest shall be disregarded in the computation of the percentage of condominium unit lessees needed to achieve the vote or written consent required to amend the declaration of condominium property regime.

(b) If the association of [apartment] owners is authorized to purchase the lessor’s interest pursuant to this section, the following powers, in addition to any other existing powers, shall be conferred upon the association [~~of apartment owners~~]:

- (1) To purchase or otherwise acquire, own, improve, use, and deal in and with the lessor’s interest in the leased fee interest appurtenant to the various condominium units in the condominium project and in the various apartment, unit, and ground leases including but not limited to the interest of any sublessor or any or all undivided interests therein;
- (2) To incur liabilities, borrow money, and secure any of its obligations by mortgage or pledge of all or any portion of its property, assessments, and funds to effectuate acquisition of the lessor’s interest;
- (3) To assess, except as provided in subsection (d), as a common expense, the expenses incurred in acquiring and holding the leased fee interest, and to service any debt associated therewith; and
- (4) To sell the leased fee interest in a condominium unit and acquired from the lessor by the association of [apartment] owners, to the then condominium unit lessee or subsequent purchaser of such unit; provided that if the lessee or subsequent purchaser declines to purchase the leased fee interest, the leased fee interest may be sold to other persons so long as reasonable disclosure is made of the [~~association of apartment owners~~]<sup>2</sup> association’s intent to sell the leased fee interest to such other persons, and the disclosure includes a statement that the lessees may have no legal remedy if they subsequently wish to purchase the leased fee interest and the other persons refuse to sell or will sell only at a price unacceptable to the lessees.

(c) No condominium unit lessee shall be compelled to purchase the leased fee interest in such condominium unit and acquired from the lessor by the association of [apartment] owners, but may instead pay lease rent to the association [~~of apartment owners~~] together with the lessee’s share of the common expenses incurred in acquiring the leased fee interest in the condominium units in the project including any debt associated therewith.

(d) If some, but not all, lessees have purchased the leased fee interest in their condominium units directly from the lessor[;] (other than purchases by the lessor or the association of [apartment] owners), the association [~~of apartment owners~~] may undertake the purchase of all or any part of the leased fee interest in the remaining leasehold condominium units in the project in accordance with subsection (b); provided that:



- (1) Sixty-seven per cent of the remaining lessees approve an amendment to the declaration authorizing the purchase of the leased fee interest by the association consistent with the requirements of this section;
- (2) All costs and expenses and all proceeds and benefits of acquiring and holding the leased fee interest and to service any debt associated therewith shall be separately assessed or credited to the condominium units of the remaining lessees in the same ratio that the common interest appurtenant to each remaining lessees' apartment or unit bears to the total common interest appurtenant to all of the remaining lessees' condominium units;
- (3) The association of [apartment] owners shall sell the leased fee interest in a condominium unit only to the lessee of the condominium unit or to the permitted assigns or successors of the lessee; provided that if the lessee or the lessee's permitted assigns or successors decline to purchase the leased fee interest, the leased fee interest may be sold to other persons so long as reasonable disclosure is made of the [association of apartment owners<sup>2</sup>] association's intent to sell the leased fee interest to the other persons and the disclosure includes a statement that the lessees may have no legal remedy if they subsequently wish to purchase the leased fee interest and the other persons refuse to sell or will sell only at a price unacceptable to the lessees; and
- (4) The association of [apartment] owners, through its board of directors in the exercise of its authority, may decide not to accept an offer from the lessor to sell all of the remaining portion of the lessor's interest to the association [of apartment owners] on the basis that the purchase is not financially feasible or is otherwise not in the best interests of the association. In that event, the board shall adopt a resolution containing written findings as to its reasons for not accepting the offer and shall distribute the resolution to the remaining lessees.

(e) If the association of [apartment] owners acquires all of the remaining portion of the lessor's interest in accordance with subsection (d), any debt associated therewith shall be secured only by the interests so acquired and by the common expense assessments upon the condominium units of the remaining lessees.

(f) For purposes of this section:

"Remaining lessees" means the lessees of condominium units in a condominium project who have not purchased the leased fee interest in their condominium units as of the effective date of the amendment referred to in subsection (d)(1).

"Condominium unit" has the same meaning as the term "apartment" or "unit" as defined in section 514A-3 or 514B-3."

SECTION 15. Section 514E-1, Hawaii Revised Statutes, is amended by amending the definition of "blanket lien" to read as follows:

"Blanket lien" means any mortgage, deed of trust, option to purchase, master lease, vendor's lien or interest under a contract or agreement of sale, or any other lien or encumbrance that (i) affects more than one time share interest either directly or by reason of affecting an entire time share unit or the property upon which the time share unit to be used by the purchasers is located, and (ii) secures or evidences the obligation to pay money or to sell or convey the property and that authorizes, permits, or requires the foreclosure and sale or other defeasance of the property affected; provided that for the purpose of this chapter, the following shall not be considered blanket liens:

- (1) The lien of current real property taxes;
- (2) Taxes and assessments levied by public authority and that are not yet due and payable;

- (3) A lien for common expenses under chapter 514A or 514B or a lien on an individual time share unit for similar expenses in favor of a homeowner or community association;
- (4) An apartment lease or condominium conveyance document conveying or demising a single condominium apartment or unit or a lease of a single cooperative apartment; and
- (5) Any lien for costs or trustee's fees charged by a trustee holding title to time share units pursuant to a trust created under section 514E-19; provided that the costs or trustee's fees are not yet due and payable."

SECTION 16. Section 514E-29, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Notice of any delinquent lien created pursuant to subsection (c) shall be recorded in the bureau of conveyances and upon recordation shall be prior to all other liens, except:

- (1) Liens for taxes and assessments lawfully imposed by governmental authority against the time share interest;
- (2) All sums unpaid on any mortgage of record encumbering the time share interest which was recorded prior to the recordation of a notice of a lien by the association; and
- (3) For a time share interest subject to a condominium property regime, the lien of the association of [~~apartment~~] owners under chapter 514A or 514B, created pursuant to section 514A-90 or 514B-146."

SECTION 17. Section 516D-1, Hawaii Revised Statutes, is amended to read as follows:

"**§516D-1 Applicability.** This chapter applies to all lands on which are situated either residential condominium property regimes created under chapter 514A or 514B, or cooperative housing corporations, which are owned or held privately or by the State or by the counties, except Hawaiian home lands subject to [~~Article~~] article XII of the [State Constitution] state constitution and lands owned or held by the federal government."

SECTION 18. Section 521-38, Hawaii Revised Statutes, is amended to read as follows:

"**§521-38 Tenants subject to rental agreement; notice of conversions.** When a period of tenancy is pursuant to any rental agreement and where a landlord contemplates conversion to a condominium property regime under chapter 514A or 514B, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the termination of the rental agreement."

SECTION 19. Section 521-71, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Before a landlord terminates a month-to-month tenancy where the landlord contemplates voluntary demolition of the dwelling units, conversion to a condominium property regime under chapter 514A or 514B, or changing the use of the building to transient vacation rentals, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the anticipated demolition or anticipated termination. If notice is revoked or amended and reissued, the notice period shall begin from the date it was reissued or amended. Any notice provided, revoked, or amended and reissued shall be in writing. When the landlord provides notification of termination pursuant to this subsection, the tenant may vacate at any time within the one-hundred-twenty-day period between the notification and the termination date,

but the tenant shall notify the landlord of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation.”

**PART III**

SECTION 20. Since the 2004 landmark legislation that enacted the new condominium law (chapter 514B, Hawaii Revised Statutes), numerous sections of the Hawaii Revised Statutes have been enacted or amended that contain references only to the new condominium regulatory scheme in chapter 514B, Hawaii Revised Statutes. As Hawaii now has two condominium laws, many of these provisions should be amended to apply to both condominiums under the “old” chapter 514A as well as under the “new” chapter 514B.

The purpose of this part is to amend sections of the Hawaii Revised Statutes that have been enacted or amended since the 2004 condominium legislation and that refer only to chapter 514B, Hawaii Revised Statutes, to include reference to chapter 514A, Hawaii Revised Statutes.

SECTION 21. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen’s disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen’s disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any express exemption or exclusion;
- (7) Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty, equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:
  - (A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;
  - (B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;

- (C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;
  - (D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and
  - (E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;
- (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country; provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft that are documented or registered under the laws of the United States;
  - (9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
  - (10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
  - (11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents;
  - (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption; and
  - (13) One hundred per cent of the gain realized by a fee simple owner from the sale of a leased fee interest in units within a condominium project, cooperative project, or planned unit development to the association of ~~[apartment]~~ owners under chapter 514A or 514B, or the residential cooperative corporation of the leasehold units.

For purposes of this paragraph:

"Fee simple owner" shall have the same meaning as provided under section 516-1; provided that it shall include legal and equitable owners;

"Legal and equitable owner", and "leased fee interest" shall have the same meanings as provided under section 516-1; and

"Condominium project" and "cooperative project" shall have the same meanings as provided under section 514C-1."

SECTION 22. Section 281-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "condominium hotel" to read:

"'Condominium hotel' means an establishment consisting of one or more buildings that includes:

- (1) Guest rooms that are apartments, as defined in section 514A-3, or units, as defined in section 514B-3, which are used to provide transient lodging for periods of less than thirty days under a written contract with the owner of [a] the apartment or unit in the condominium hotel operation;
- (2) Guest rooms that are units, owned or managed by the condominium hotel operator providing transient lodging for periods of less than thirty days, which are offered for adequate pay to transient guests; and
- (3) A suitable and adequate kitchen and dining room, where meals are regularly prepared and served to guests and other customers.

A “condominium hotel” does not include a hotel that may be part of a condominium property regime established under chapter 514A or 514B, that does not have guest rooms that are separate apartments, as defined in section 514A-3, or units, as defined in section 514B-3.”

2. By amending the definition of “premises” or “licensed premises” to read:

““Premises” or “licensed premises” means the building and property that houses the establishment for which a license has been or is proposed to be issued; provided that in the case of class 12 hotel license, “premises” includes the hotel premises; provided further that in the case of a class 15 condominium hotel license, “premises” includes apartments, as defined in section 514A-3, or units, as defined in section 514B-3, that are used to provide transient lodging for periods of less than thirty days under a written contract with the owner or owners of each unit in, and common elements for access purposes as established by the declaration of condominium property regime of, the condominium hotel; and provided further that if an establishment is in a retail shopping complex the businesses of which have formed a merchants association, “premises” means the establishment. As used in this definition, “establishment” means a single physical location where the selling of liquor takes place.”

SECTION 23. Section 485A-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following transactions are exempt from the requirements of sections 485A-301 to 485A-305 and 485A-504:

- (1) An isolated nonissuer transaction, whether or not effected by or through a broker-dealer;
- (2) A nonissuer transaction by or through a broker-dealer registered[7] or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:
  - (A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
  - (B) The security is sold at a price reasonably related to its current market price;
  - (C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;
  - (D) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter

- or a record filed with the Securities and Exchange Commission that is publicly available and contains:
- (i) A description of the business and operations of the issuer;
  - (ii) The names of the issuer's executive officers and the names of the issuer's directors, if any;
  - (iii) An audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
  - (iv) An audited income statement for each of the issuer's two immediate previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and
- (E) Any one of the following requirements is met:
- (i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers' Automated Quotation System;
  - (ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
  - (iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or
  - (iv) The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;
- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;
- (4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));
- (5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:
- (A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or
  - (B) Has a fixed maturity or a fixed interest or dividend, if:
    - (i) A default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and

- (ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
- (6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;
- (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;
- (8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000, acting in the exercise of discretionary authority in a signed record for the account of others;
- (9) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (10) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
  - (A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
  - (B) A general solicitation or general advertisement of the transaction is not made; and
  - (C) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;
- (11) A transaction by an executor, administrator of an estate, personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (12) A sale or offer to sell to:
  - (A) An institutional investor;
  - (B) A federal covered investment adviser; or
  - (C) Any other person exempted by rule adopted or order issued under this chapter;
- (13) Any transaction pursuant to a sale or an offer to sell securities of an issuer, if the transaction is part of an issue in which:
  - (A) There are no more than twenty-five purchasers (other than those designated in paragraph (12)), wherever located, during any twelve consecutive months;
  - (B) The issuer reasonably believes that all purchasers (other than those designated in paragraph (12)), wherever located, are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. The purchase shall be presumed to be made with a view to distribute and not to invest if any resale of a security sold in reliance on this exemption is within twelve months of sale, except a resale pursuant to a registration statement effective under section 485A-301, or to an accredited investor pursuant to an exemption available under this chapter;
  - (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a broker-dealer or

- agent registered under this chapter, for soliciting a prospective purchaser in this State; and
- (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;
- (14) A transaction under an offer to existing security holders of the issuer, including persons ~~[that]~~ who at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;
- (15) (A) A transaction involving the offer or sale of a security by an issuer to an accredited investor that meets the following requirements:
- (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
  - (ii) The issuer is not in the development stage, without specific business plan or purpose;
  - (iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
  - (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. The purchase shall be presumed to be made with a view to distribute and not to invest if any resale of a security sold in reliance on this exemption is within twelve months of sale, except a resale pursuant to a registration statement effective under section 485A-301, or to an accredited investor pursuant to an exemption available under this chapter;
- (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten percent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:
- (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission;
  - (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
  - (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
  - (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
- (C) Subparagraph (B) shall not apply if:



- (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
  - (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
  - (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph; and
- (D) An issuer claiming the exemption under this paragraph, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the offering circular or similar document provided to the accredited investor and a \$200 filing fee.

For the purposes of this paragraph, “accredited investor” shall have the same meaning as provided in Rule 501(a) adopted under the Securities Act of 1933 (17 C.F.R. 230.501(a));

- (16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:
  - (A) A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and
  - (B) A stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;
- (17) An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:
  - (A) A registration statement has been filed under this chapter, but is not effective;
  - (B) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this chapter; and
  - (C) A stop order of which the offeror is aware has not been issued by the commissioner under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;
- (18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;
- (19) A rescission offer, sale, or purchase under section 485A-510;
- (20) An offer or sale of a security to a person not a resident of this State and not present in this State if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;
- (21) Employees’ stock purchase, savings, option, profit-sharing, pension, or similar employees’ benefit plan, including any securities, plan interests,

and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:

- (A) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;
  - (B) Family members who acquire the securities from those persons through gifts or domestic relations orders;
  - (C) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and
  - (D) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty per cent of their annual income from those organizations;
- (22) A transaction involving:
- (A) A stock dividend or equivalent equity distribution, whether or not the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;
  - (B) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or
  - (C) The solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162);
- (23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in accordance with chapter 91, the commissioner, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors;
- (24) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of this State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of this

State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation; provided that the issuer of the security shall apply for the exemption to the commissioner on such form and containing such information as the commissioner may prescribe. If the commissioner finds that the business applicant's proposed plan and the proposed issuance of securities are fair, just, and equitable, that the applicant intends to transact its business fairly and honestly, and that the securities that the applicant proposes to issue and the method to be used by the applicant in issuing or disposing of the securities will not, in the opinion of the commissioner, work a fraud upon the purchaser thereof, the commissioner shall issue to the applicant a permit authorizing the applicant to issue and dispose of the securities in this State in the manner provided herein and in such amounts and for such consideration as the commissioner may provide in the permit. Otherwise, the commissioner shall deny the application and refuse the permit and notify the applicant of the decision in writing, subject to appeal as provided in section 485A-609. In any permit issued under this paragraph, the commissioner may require the deposit in escrow or impoundment of any or all securities, the proceeds from the sale thereof, approval of advertising material, and any of the conditions as set forth in section 485A-304(f). The commissioner may act as escrow holder for securities required to be deposited in escrow by the commissioner's order or as a necessary signatory on any account in which impounded proceeds from the sale of escrowed securities are deposited;

- (25) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of this State of an apartment or unit in a condominium project, and a rental management contract relating to the apartment<sup>[s]</sup> or unit, including an interest in a partnership formed for the purpose of managing the rental of apartments or units if the rental management contract or the interest in the partnership is offered at the same time as the apartment or unit is offered.

For the purposes of this paragraph, the terms "apartment", "unit", "condominium", and "project" shall have the meanings prescribed in section 514A-3<sup>;</sup> or 514B-3; and

- (26) Any transaction not involving a public offering within the meaning of Section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d), but not including any transaction specified in the rules and regulations thereunder."

SECTION 24. Section 521-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) [~~A unit owners' association under chapter~~] An association of owners under chapter 514A or 514B shall have standing to initiate and prosecute a summary proceeding for possession against a tenant residing in the condominium project who repeatedly violates the association's governing documents or the rights of other occupants to quiet enjoyment and whose landlord refuses to act; provided that in such cases, the landlord shall be named as an additional party defendant."

#### PART IV

SECTION 25. There are fundamental differences between chapters 514A and 514B, Hawaii Revised Statutes, including changes in terminology. An "apartment"

under chapter 514A is a “unit” under chapter 514B, and an “association of apartment owners” under chapter 514A is a “unit owners’ association” under chapter 514B. Numerous statutory provisions in the Hawaii Revised Statutes delineate the powers and duties, rights and responsibilities of condominium owners and associations using terminology of common usage rather than referring to specific sections or chapters of the Hawaii Revised Statutes. To clarify that these provisions apply to both condominiums and owners under chapter 514B as well as condominiums and owners under chapter 514A, these sections should be amended to include terms used in both chapters.

The purpose of this part is to make amendments to sections of the Hawaii Revised Statutes to conform to the terminology used in chapters 514A and 514B, Hawaii Revised Statutes.

SECTION 26. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

**“§237-24.3 Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms “agricultural commodity”, “producer”, and “produce dealer” shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;
- (2) Amounts received from sales of:
  - (A) Intoxicating liquor as the term “liquor” is defined in chapter 244D;
  - (B) Cigarettes and tobacco products as defined in chapter 245; and
  - (C) Agricultural, meat, or fish products;
 to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state on the shipper’s vessels or airplanes;
- (3) Amounts received by the manager, submanager, or board of directors of:
  - (A) An association of [apartment] owners of a condominium property regime established in accordance with chapter 514A or 514B; or
  - (B) A nonprofit homeowners or community association incorporated in accordance with chapter 414D or any predecessor thereto and existing pursuant to covenants running with the land, in reimbursement of sums paid for common expenses;
- (4) Amounts received or accrued from:
  - (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
  - (B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and
  - (C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;

- (5) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;
- (6) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
- (7) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph:
  - "Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; and
  - "Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by the practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;
- (8) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;
- (9) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;
- (10) Amounts received by a labor organization for real property leased to:
  - (A) A labor organization; or
  - (B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.

As used in this paragraph, “labor organization” means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended;

- (11) Amounts received from foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes; and
- (12) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of “interstate air transportation” is the same as in 49 U.S.C. 40102.”

SECTION 27. Section 467-30, Hawaii Revised Statutes, is amended to read as follows:

**“§467-30 Registration, bonding, and other requirements for condominium hotel operators.** (a) As used in this section, “condominium hotel” includes those apartments or units in a project as defined in section 514A-3 or 514B-3 and subject to chapter 514A or 514B, which are used to provide transient lodging for periods of less than thirty days.

(b) All condominium hotel operators shall register with the commission as a sole proprietor, partnership, limited liability company, or corporation and shall:

- (1) Register by submitting a completed commission application form with the commission requested information, receive commission approval prior to conducting condominium hotel activity, and re-register on or before the commission prescribed deadline prior to the registration expiration date. The registration and re-registration shall expire on December 31 of an even-numbered year. Registration information shall include but not be limited to the number of apartments or units managed for others as well as the number of apartments or units owned by the condominium hotel operator. Any operator failing to register with the commission shall be subject to a fine not exceeding an amount equal to \$25 multiplied by the aggregate number of apartments or units being utilized as a condominium hotel. Each month or fraction of a month of noncompliance shall be deemed a new and separate violation;
- (2) Obtain and keep current a fidelity bond from an insurance company authorized to issue fidelity bonds by the insurance division of the department of commerce and consumer affairs. The fidelity bond shall be in an amount equal to \$500 multiplied by the aggregate number of apartments or units in the condominium hotel operation; provided that the minimum amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of apartments or units excludes the number of apartments or units owned by the condominium hotel operator either as a sole proprietor, partnership, limited liability company, or corporation or those apartments or units included in a registered time share plan managed by a registered time share plan manager. The fidelity bond shall cover all of the condominium hotel operator’s employees handling or having custody and control of either the condominium hotel operator’s or the apartment or unit owner’s funds, or both. Upon request by the commission, the condominium hotel operator shall provide evidence of a current fidelity bond or a certification statement from an insurance representative of an insurance company authorized by the insurance divi-

sion of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. The commission may adopt rules establishing conditions and terms by which it may grant a bond alternative or permit deductibles. No condominium hotel operator shall be exempt from the fidelity bond requirement; and

- (3) Pay an application fee and an initial registration or a re-registration fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, which fees shall be deposited with the director of commerce and consumer affairs to the credit of the compliance resolution fund established pursuant to section 26-9(o);

provided that this section shall not apply to persons who are subject to section 467-2.

(c) In the course of operating a condominium hotel, neither a real estate broker license nor a real estate salesperson license shall be required of those employees of a condominium hotel operator who only perform or facilitate the delivery of customary hotel services.

(d) All employees handling or having custody or control of the funds received by the condominium hotel operator shall be covered by a fidelity bond. The fidelity bond shall protect the condominium hotel operator against fraudulent or dishonest acts by the employees of the condominium hotel operator.

(e) As used in this section, “operating a condominium hotel” includes the management of the apartments or units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartments or units directly or indirectly from the apartment or unit owners for purposes of providing transient lodging. The condominium hotel operator shall provide a written contract to the owner or owners of each apartment or unit under the condominium hotel operation, expressing the exact agreements of each party including all financial and accounting obligations, and the notification requirements of subsection (g).

(f) A condominium hotel operator shall operate in condominium projects specifically authorized for transient lodgings by county zoning and regulations and specifically permitted by the condominium project’s declaration and bylaws.

(g) The registered condominium hotel operator:

- (1) Shall not provide or offer lodgings thirty days or longer;
- (2) Shall not be licensed as a real estate broker or a real estate salesperson;
- (3) Shall not conduct any other activities contained in the definition of the term “real estate broker”;
- (4) Shall appoint an employee or principal to have direct management and responsibility over condominium hotel operations; and
- (5) Shall provide evidence of written notification to all representing apartment or unit owners of the provisions of this section including the non-applicability of the real estate recovery fund.

(h) Any condominium hotel operator aggrieved by the fraudulent or dishonest acts of an employee shall act promptly and diligently to recover from the fidelity bond required by this section. The condominium hotel operator shall apply all proceeds received from the fidelity bond against all losses incurred by apartment or unit owners due to fraudulent or dishonest acts by employees. If more than one apartment or unit owner suffers a loss, the condominium hotel operator shall divide the proceeds among the [apartment] owners in proportion to each [apartment] owner’s loss.

(i) All persons handling or having custody and control of either the condominium hotel operator’s or the apartment or unit owner’s funds shall be either employees of the condominium hotel operator or principals of the condominium hotel operator.

(j) The registration and fidelity bond requirements of this section shall not apply to active real estate brokers, in compliance with and licensed under this chapter, conducting condominium hotel activity.”

SECTION 28. Section 501-20, Hawaii Revised Statutes, is amended by amending the definition of “apartment lease” to read as follows:

““Apartment lease” means an apartment or unit lease, a condominium conveyance document, an apartment or unit deed and ground lease, or other instrument which has been registered pursuant to section 501-121 and which leases or subleases a condominium apartment or unit or its appurtenant undivided interest in the land of a condominium project established or existing under [~~the condominium property act~~] chapter 514A or 514B or at common law.”

SECTION 29. Section 501-105, Hawaii Revised Statutes, is amended to read as follows:

**“§501-105 Grantee’s address, etc., to be stated.** Every deed or other voluntary instrument presented for recording shall contain or have indorsed upon it the full name or names, if more than one, and the address of the grantee or other person acquiring or claiming an interest under the instrument and every document shall also contain or have indorsed upon it a statement that the grantee is married or unmarried, and if married, the statement shall give the name in full of the husband or wife. Whenever the grantee is a corporation or partnership, the document shall contain or have indorsed upon it the state where the entity is registered and the entity’s address. All names and addresses shall also be entered on all certificates. Notices and processes issued in relation to registered land in pursuance of this chapter may be served upon any person in interest by mailing the same to the address so given, and shall be binding whether such person resides within or without the State.

Any deed conveying one or more but not all lots or all interests in a lot appurtenant to apartments or units in a condominium [~~property regime~~] project in a certificate shall contain full memoranda relating to easements, rights-of-way, and all other liens and encumbrances affecting the particular lot, lots, interest appurtenant to an apartment[;] or unit, or interests appurtenant to apartments or units conveyed. If the deed affects all of the land or interests appurtenant to apartments or units in a certificate of title, encumbrances may be referred to by reference.”

SECTION 30. Section 501-241, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) Without limiting the generality of subsection (a), the following instruments need not be registered pursuant to this chapter to be effective and shall be recorded in the bureau of conveyances pursuant to chapter 502:

- (1) An assignment or other instrument transferring a leasehold time share interest;
- (2) A mortgage or other instrument granting a lien on a leasehold time share interest;
- (3) An agreement of sale for the sale of a leasehold time share interest. Any such agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;
- (4) A lien or notice of lien pertaining to a leasehold time share interest in favor of a time share owners association, an association of [~~apartment~~] owners[;] under chapter 514A or 514B, or a similar homeowner’s association;



- (5) A judgment, decree, order of court, attachment, writ, or other process against a leasehold time share interest;
- (6) A mechanic's or materialman's lien or other lien upon a leasehold time share interest;
- (7) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a leasehold time share interest and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to ~~[a power of sale under]~~ section 667-5, or otherwise;
- (8) A power of attorney given by the owner of a leasehold time share interest or the vendor or vendee under an agreement of sale for the sale of a leasehold time share interest, a mortgagee or other lienor having a mortgage or lien upon a leasehold time share interest, or another party holding a claim or encumbrance against or an interest in a leasehold time share interest; or
- (9) An instrument assigning, extending, continuing, dissolving, discharging, releasing in whole or in part, reducing, canceling, extinguishing, or otherwise modifying or amending any of the foregoing instruments."

2. By amending subsection (e) to read:

"(e) Notwithstanding subsections (a), (b), and (c), the following instruments shall be registered by recording the instrument with the assistant registrar and by a brief memorandum thereof made by the assistant registrar upon the certificate of title, and signed by the assistant registrar:

- (1) The apartment or unit lease, and any amendments thereto, and any cancellation or extinguishment thereof;
- (2) Any deed or other instrument conveying the fee interest in registered land and any other instrument encumbering or otherwise dealing with the fee interest in registered land including but not limited to a mortgage of the fee interest, an assignment of the lessor's interest in a lease, or the designation, grant, conveyance, transfer, cancellation, relocation, realignment, or amendment of any easement encumbering the fee interest;
- (3) If the apartment or unit lease is a sublease, any assignment or other conveyance of the sublessor's estate or any other leasehold estate which is superior to the apartment or unit lease, and any other instrument mortgaging, encumbering, or otherwise dealing with the sublessor's estate or any other estate which is prior and superior to the leasehold time share interest;
- (4) Any other instrument assigning, modifying, canceling, or otherwise dealing with an interest in registered land which is:
  - (A) Less than an estate in fee simple; and
  - (B) Prior or superior to the lessee's interest in a leasehold time share interest;
- (5) The declaration of condominium property regime or similar declaration by whatever name denominated, the bylaws of the association of ~~[apartment]~~ owners~~;~~ under chapter 514A or 514B, the condominium map, any declaration of annexation or deannexation, any declaration of merger and any instrument effecting a merger, and any amendments to any of the foregoing and any cancellation or extinguishment thereof;
- (6) Any declaration of covenants, conditions, and restrictions, or similar instrument, by whatever name denominated, encumbering the fee, the bylaws of any homeowners association, any declaration of annexation

- or deannexation, any amendments and supplements thereto, and any cancellation or extinguishment thereof;
- (7) Any declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, establishing the time share plan, the bylaws of the time share owners association, any declaration of annexation or deannexation, any amendments and supplements thereto, and any cancellation or extinguishment thereof; and
  - (8) Any notice of time share plan, any declaration of annexation or deannexation, any amendments thereto, and any cancellation or extinguishment thereof.”

SECTION 31. Section 508D-3, Hawaii Revised Statutes, is amended to read as follows:

“**§508D-3 Exemptions.** This chapter shall not apply to the following sales of residential real property:

- (1) Sale to a co-owner;
- (2) Sale to a spouse, parent, or child of the seller;
- (3) Sale by devise, descent, or court order;
- (4) Sale by operation of law, including<sup>[;]</sup> but not limited to<sup>[;]</sup> any transfer by foreclosure, bankruptcy, or partition, or any transfer to a seller’s creditor incident to a deed (or assignment) in lieu of foreclosure, workout, or the settlement or partial settlement of any preexisting obligation of a seller owed a creditor and any later sale of residential real property by such creditor;
- (5) Sale by a lessor to a lessee resulting from conversion of leased land to fee simple;
- (6) Initial sale of new residential real property pursuant to chapter 484 under a current public offering statement or chapter 484 exemption;
- (7) Sales of condominium apartments or units accompanied by delivery of an unexpired developer’s public report; or
- (8) Sale of time share interests as defined under chapter 514E.”

SECTION 32. Section 514C-1, Hawaii Revised Statutes, is amended by amending the definition of “condominium unit lessee” to read as follows:

““Condominium unit lessee” means an individual or individuals owning or leasing a condominium apartment or unit situated on leasehold land.”

SECTION 33. Section 514C-2, Hawaii Revised Statutes, is amended to read as follows:

“**[H]§514C-2[H] Right of first refusal.** When the leased fee interest in land under a condominium project or cooperative project or any part thereof is to be sold to any party other than the association of owners or the cooperative housing corporation, the seller shall first provide the board of directors of the association of owners or the cooperative housing corporation with written notice delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, to any two of the president, vice-president, or managing agent (if any), of its intent to sell that interest, together with a complete and correct copy of the purchaser’s written offer, which offer shall contain the full and complete terms thereof. The association of [apartment] owners or cooperative housing corporation shall have a right of first refusal to purchase that leased fee interest for the same price as is contained in the written purchase offer.”

SECTION 34. Section 514C-5, Hawaii Revised Statutes, is amended to read as follows:

**“§514C-5 Offer to other prospective purchasers; time limit.** No lessor shall sell the leased fee interest in any land under a condominium project or cooperative project containing one or more residential units or any part thereof to any party other than the association of [apartment] owners or cooperative housing corporation for that project until a right of first refusal for the purchase of that interest has been offered as required by this part and has been rejected in writing by the board of directors, except in the case of sales to individual condominium unit lessees or cooperative unit lessees, which shall be subject to the requirements of section 514C-6.5; provided that an offer made pursuant to sections 514C-2, 514C-3, and 514C-6.5 shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing corporation within one hundred twenty days of its receipt of the written notice from the seller, as evidenced by the return receipts, or if the sale, through no fault of the seller, has not closed upon the purchase of one hundred per cent of the interest being sold within one hundred eighty days of receipt by the board of directors of such written notice, as evidenced by the return receipts. In the event that closing is delayed due to any fault of the seller, the deadline for closing shall be extended for a period of time equal to the delay caused by [E]the[}] seller.”

SECTION 35. Section 514C-6, Hawaii Revised Statutes, is amended to read as follows:

**“§514C-6 Powers of association of [apartment] owners and cooperative housing corporation.** (a) The association of [apartment] owners under chapter 514A or 514B, or cooperative housing corporation may purchase the leased fee interest in the land; provided that at least sixty-seven per cent of the condominium unit lessees or cooperative unit lessees approve of the purchase. If the seller is also a condominium unit lessee or cooperative unit lessee, the seller’s interest shall be disregarded in the computation to achieve the sixty-seven per cent requirement. As used herein:

- (1) Sixty-seven per cent of the condominium unit lessees means the lessees of units to which sixty-seven per cent of the common interests are apurtenant; and
- (2) Sixty-seven per cent of the cooperative unit lessees means shareholders having at least sixty-seven per cent of the shares in the cooperative housing corporation.

[E](b)[}] If the association of [apartment] owners or cooperative housing corporation accepts the seller’s offer to purchase the leased fee interest in the land, the following powers, in addition to any other powers, shall be conferred upon the association of owners or cooperative housing corporation:

- (1) To purchase or otherwise acquire, own, improve, use, and otherwise deal in and with the leased fee interest to the land or any or all undivided interests therein;
- (2) To incur liabilities, borrow money, and secure any of its obligations by mortgage or pledge of all or any portion of its property, assessments, and funds;
- (3) To assess, in a fair and equitable manner, the condominium unit lessees or cooperative unit lessees for the expenses incurred in acquiring the leased fee interest to the land, or to service any debt associated therewith; and

- (4) To sell the leased fee interest appurtenant to a condominium apartment or unit to any condominium unit lessee or subsequent purchaser of such unit.

[F](c)[3] No conveyance of the leased fee interest to or by an association of owners or cooperative housing corporation, and no borrowing, mortgage, or pledge by an association of owners or cooperative housing corporation shall be invalid because it was without capacity or power to do such an act or to make or receive such conveyance, transfer, or loan.

[F](d)[3] No condominium unit lessee shall be compelled to participate in the purchase of the leased fee interest of the property, but may instead pay lease rent to the association of owners.”

SECTION 36. Section 514C-6.5, Hawaii Revised Statutes, is amended to read as follows:

**“§514C-6.5 Sales to individual lessees.** Notwithstanding any other provision in this part to the contrary, a lessor may sell the leased fee interest in any land under a condominium project or cooperative project or any part thereof to individual condominium unit lessees or cooperative unit lessees; provided that the following requirements have been complied with:

- (1) No individual lessee shall be obligated to enter into a contract to purchase without having been afforded a period of at least ninety days within which to consider the offer made by the lessor; provided that the individual lessee may enter into a contract to purchase before the ninety days expires if the individual lessee so desires. The lessee shall further have the right to terminate such contract to purchase without penalty for a period of ninety days from the date the contract was first entered into;
- (2) At the time any offer to sell the leased fee interest is communicated to the lessee by the lessor, the association of owners or cooperative housing corporation shall be provided with written notice delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, to any two of the president, vice-president, or managing agent (if any), of the lessor’s intent to sell the interest, together with a complete and correct copy of the offer, which offer shall contain the full and complete terms thereof. Except as provided in paragraph (3), where the board of directors of the association of [apartment] owners or cooperative housing corporation has written authorization to represent its members, then the association of owners or cooperative housing corporation shall have a right of first refusal to purchase that leased fee interest for the same price as is contained in the written purchase offer; provided that the offer shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing corporation within one hundred twenty days of its receipt of written notice from the seller, as evidenced by the return receipts;
- (3) Any board of directors of the association of [apartment] owners or cooperative housing corporation may fully or partially waive its right of first refusal at any time with written notice to the lessor; provided that it shall waive its right of first refusal with respect to the leased fee interest appurtenant to a lessee’s apartment at the written request of the lessee. The legislature hereby gives the board of directors of the association of [apartment] owners or cooperative housing corporation the authority to exercise the foregoing waiver without having to amend any bylaws, charter, or other governing documents;

- (4) Notwithstanding any provision contained in any bylaws, ~~[or]~~ any amendment thereto, or written authorization~~[-]~~ authorizing the board of directors of the association of ~~[apartment]~~ owners or cooperative housing corporation to represent the individual lessees in the lease-to-fee conversion, each ~~[individual]~~ lessee shall have the right to represent ~~[himself or herself]~~ oneself in such lease-to-fee conversion by giving written notice of such desire to the lessor and the board of directors; and
- (5) After the lessor (or its agent or representative) has been able to hold one meeting with the lessees and has been able to provide a written summary of the meeting to the lessees, then for a period of ninety days thereafter, the lessor, its agents, employees, and representatives, shall not initiate communication with the lessees regarding the offer, although such parties may respond to inquiries made by lessees.”

SECTION 37. Section 516D-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided ~~[for]~~ in this section, for any sale of a condominium or a cooperative residential leasehold apartment~~[-]~~ or unit, no later than ten calendar days after the acceptance of the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract, the seller, either directly or through the seller’s agent, shall provide to the buyer for the buyer’s approval and acceptance one of the following lease documents which provide the major provisions of the lease, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated, and surrender clause provisions:

- (1) Master lease and any amendments thereto; ~~[or]~~
- (2) Apartment or unit lease and any amendments thereto; or
- (3) For initial buyers of condominium apartments or units only, an unexpired preliminary, final or supplemental condominium property regime public report.

A sale for the purposes of this subsection shall not be deemed to include any transfer to a co-owner, or to a spouse, parent, or child of the seller, or to any transfer by devise, descent, court order, or by operation of law, including~~[-]~~ but not limited to~~[-]~~ any transfer by foreclosure, bankruptcy, or partition sale. Upon receipt of the applicable lease document, the buyer shall have ten calendar days to review, accept or reject the terms of the lease.”

SECTION 38. Section 521-52, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If the dwelling unit is an apartment or unit in a condominium property regime the tenant shall comply with the bylaws of the association of ~~[apartment]~~ owners under chapter 514A or 514B and if the dwelling unit is an apartment in a cooperative housing corporation the tenant shall comply with the bylaws of the corporation.”

SECTION 39. Section 667-5.5, Hawaii Revised Statutes, is amended to read as follows:

“**§667-5.5 Foreclosure notice.** Notwithstanding any law or agreement to the contrary, any person who forecloses on a property within a planned community ~~[association]~~, a condominium apartment~~[-]~~ or unit, or an apartment in a cooperative housing project shall notify, by way of registered or certified mail, the board of directors of the planned community association, the association of ~~[apartment]~~ owners of the condominium~~[-]~~ project, or the cooperative housing project in which the property

to be foreclosed is located, of the foreclosure at the time foreclosure proceedings are begun. The notice, at a minimum, shall identify the property, condominium apartment[~~;~~ or unit, or cooperative apartment which is the subject of the foreclosure and identify the name or names of the person or persons bringing foreclosure proceedings. This section shall not apply when the planned community association, condominium association[~~;~~ of owners, or cooperative housing corporation is a party in a foreclosure action. This section shall not affect civil proceedings against parties other than the planned community association, association of [~~apartment~~] owners, or cooperative housing corporation.”

SECTION 40. Section 672E-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Within thirty days following any proposal for inspection under subsection (b)(2), the claimant shall provide access to:

- (1) Inspect the premises;
- (2) Document any alleged construction defects; and
- (3) Perform any testing required to evaluate the nature, extent, and cause of the asserted construction defect, and the nature and extent of any repair or replacement that may be necessary to remedy the asserted construction defect;

provided that if the claimant is an association of [~~apartment~~] owners[~~;~~ under chapter 514A or 514B, the claimant shall have forty-five days to provide such access. If access to an individual condominium apartment or unit is necessary, and the association is unable to obtain such access, then the association shall have a reasonable time to provide access. If destructive testing is required, the contractor shall give advance notice of tests and return the premises to its pre-testing condition. If inspection or testing reveals a condition that requires additional testing to fully and completely evaluate the nature, cause, and extent of the construction defect, the contractor shall provide notice to the claimant of the need for additional testing. [~~Claimant~~] The claimant shall provide additional access to the premises. If a claim is asserted on behalf of owners of multiple dwellings, or multiple owners of units within a multi-family complex, the contractor shall be entitled to inspect each of the dwellings or units.”

## PART V

SECTION 41. This Act shall be amended to conform to all other acts passed by the legislature during the regular session of 2008, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

SECTION 42. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 43. Upon its approval, this Act shall take effect retroactive to July 1, 2006; provided that:

- (1) Section 3(2) shall be repealed on June 30, 2008;
- (2) Sections 3(3) and (23) shall take effect on July 1, 2008; and
- (3) The amendments to section 237-24.3, Hawaii Revised Statutes, by section 26 of this Act shall not be repealed when that section is reenacted on December 31, 2009, by section 4 of Act 239, Session Laws of Hawaii 2007.

(Approved April 22, 2008.)

A Bill for an Act Making an Emergency Appropriation to the Department of Health for the Adult Mental Health Division.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Although funds were appropriated to the department of health for adult mental health services for the fiscal period beginning July 1, 2007, and ending June 30, 2008, a critical funding emergency now exists. The program will expend all appropriated funds before the end of the current fiscal year, and the department will be unable to meet its fiscal obligation to provide services to certain adults with severe mental illness.

The adult mental health division serves a continuously increasing number of eligible mental health consumers. Concurrently throughout the year, the adult mental health division has increased its related services in the areas of case management, crisis services, treatment services, rehabilitation services, and housing. This emergency increase is to continue existing services to meet the needs of the expanding eligible population and to continue funding of required services developed during the fiscal year.

An emergency appropriation is also needed as the one-time medicaid rehab option retroactive billing opportunity has passed, resulting in a deficit in federal matching funds. Additional emergency funding is also required to address higher operational costs at the Hawaii state hospital as a result of an increased census.

The purpose of this Act is to appropriate emergency funds for:

- (1) The revenue shortfall for ongoing services of the adult mental health division; and
- (2) Operational costs at the Hawaii state hospital.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,000,000, or so much thereof as may be necessary for fiscal year 2007-2008 for the revenue shortfall for ongoing services provided by the adult mental health division, and operational costs at the Hawaii state hospital.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 22, 2008.)

A Bill for an Act Making an Emergency Appropriation to the Hawaii Health Systems Corporation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. This emergency appropriation is necessary to ensure that the Hawaii health systems corporation can pay for operation and provision of current levels of service at Leahi hospital, Maluhia, Samuel Mahelona memorial hospital, Lana'i community hospital, Hilo medical center, Ka'u hospital, Kona community hospital, Kohala hospital, and Maui memorial medical center.

The purpose of this Act is to appropriate \$25,000,000 in general funds for fiscal year 2007-2008 to adjust accounts payable remittances to no more than forty-five days from the date of the invoice for Hawaii health systems corporation's facilities in order to bring current accounts payable balances that are due to essential vendors. This will allow delivery of goods and services to these facilities to continue on a timely basis so that the facilities will be able to maintain operations.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$14,000,000 or so much thereof as may be necessary for fiscal year 2007-2008 for the Hawaii health systems corporation to pay accounts payable within forty-five days from the date of the invoice for Hawaii health systems corporation's facilities, excluding the Maui memorial medical center located in the Maui region of the Hawaii health systems corporation.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of ~~\$11,000,000~~ \$0<sup>1</sup> or so much thereof as may be necessary for fiscal year 2007-2008 for Maui memorial medical center; provided that the sum appropriated under this section shall only be expended if the operating loan that is being negotiated by Maui memorial medical center does not close prior to April 4, 2008.

SECTION 5. The sums appropriated shall be expended by Hawaii health systems corporation for the purposes of this Act.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. This Act shall take effect upon approval.

(Approved April 22, 2008.)

#### Note

1. Item vetoed, replaced, and initialed "LL" on April 21, 2008.

## ACT 31

H.B. NO. 2502

A Bill for an Act Relating to Solar Energy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that renewable energy resources can greatly benefit Hawaii's economy, environment, energy security, and sustainability. The increased use of Hawaii's abundant renewable energy resources, such as wind, solar, ocean thermal, wave, and biomass resources, is key to reducing Hawaii's green house gas emissions and contribution to global warming and creating new job opportunities and economic diversification.



The legislature also finds that Hawaii’s trade deficit is a significant impediment to Hawaii’s goal of economic and energy security and sustainability. Specifically, in 2006, Hawaii goods and services exports were only \$16,300,000,000, including visitor spending, while imports were approximately \$24,000,000,000. The legislature further finds that Hawaii’s oil imports totaled \$3,400,000,000 for the year, accounting for approximately 15 per cent of the total imports. Over 93 per cent of Hawaii’s energy is supplied by fossil fuel. The legislature further finds that allowing solar energy facilities to be built on marginal agricultural lands may have more beneficial effects for Hawaii’s economy, environment, and energy security than leaving such lands unused.

The purpose of this Act is to include a solar energy facility as a permitted use within the agricultural district on land with soil classified D or E.

SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Agricultural districts shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry[;] and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind generated energy production for public, private, and commercial use;
- (5) Biofuel production, as described in section 205-4.5(a)(15), for public, private, and commercial use;
- (6) Solar energy facilities; provided that this paragraph shall apply only to land with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class D or E;
- ~~(6)~~ (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether ~~[or not]~~ conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);
- ~~(7)~~ (8) Wind machines and wind farms;
- ~~(8)~~ (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
- ~~(9)~~ (10) Agricultural parks;
- ~~(10)~~ (11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; and
- ~~(11)~~ (12) Open area recreational facilities.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used

for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 2008.)

## ACT 32

H.B. NO. 2347

A Bill for an Act Relating to Metal.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Act 197, Session Laws of Hawaii 2007, was enacted to help law enforcement stem the tide of metal thefts, particularly thefts of copper, that have damaged property, left stretches of roadway in the dark, and threatened the power grid. Act 197 did so, in part, by amending section 445-235, Hawaii Revised Statutes, to increase the penalties for scrap dealers who operate without a license or who fail to keep, or falsify, records of scrap metal purchases required to be kept by law.

The legislature also finds that, while section 445-235, Hawaii Revised Statutes, had not previously been amended since it was first enacted in 1976, concern has arisen recently that, as written, it may be read to require that both section 445-232 and section 445-233, Hawaii Revised Statutes, be violated before a penalty can be imposed for violation of either of them. This concern arises from the fact that the reference to these two sections in section 445-235, Hawaii Revised Statutes, is separated by the conjunctive “and” instead of the disjunctive “or.”

The legislature declares that it was never the legislature’s intent to require that both section 445-232 and section 445-233, Hawaii Revised Statutes, be violated before a penalty can be imposed for violation of either of them. Clearly, a scrap dealer can violate section 445-232, Hawaii Revised Statutes, by being unlicensed without also violating section 445-233, Hawaii Revised Statutes, by failing to keep or falsifying records. The converse is also plainly true. A contrary reading is also plainly inconsistent with the intent of many similar provisions in the Hawaii Revised Statutes. The legislature intended to eliminate the possibility of an erroneous reading of section 445-235, Hawaii Revised Statutes, when it enacted Act 197, Session Laws of Hawaii 2007, but, due to an inadvertent error, the amending language was omitted from the conference draft adopted by the house of representatives and the senate.

It is the purpose of this Act to affirm that an offender may be punished under section 445-235, Hawaii Revised Statutes, for violating either section 445-232 or section 445-233, Hawaii Revised Statutes.

SECTION 2. Section 445-235, Hawaii Revised Statutes, is amended to read as follows:

**“§445-235 Prohibitions; penalty.** Any person who violates ~~[sections]~~ section 445-232 ~~[and]~~ or 445-233, or any person who falsifies a statement required by

## ACT 33

section 445-233, shall be guilty of a misdemeanor and shall be sentenced in accordance with chapter 706, except that the court shall impose a minimum sentence of:

- (1) A fine of \$1,000 for the first offense;
- (2) A fine of \$3,000 for the second offense; and
- (3) A fine of \$5,000 and the suspension of the scrap dealer's license for a period of six months for the third or subsequent offense; provided that if the third or subsequent offense occurs within a five-year period from the occurrence of two prior offenses, the scrap dealer shall be subject to license revocation."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval; provided that the amendments made to section 445-235, Hawaii Revised Statutes, by section 2 of this Act shall not be repealed when that section is reenacted on July 1, 2009, pursuant to section 7 of Act 197, Session Laws of Hawaii 2007.

(Approved April 23, 2008.)

## ACT 33

H.B. NO. 2369

A Bill for an Act Relating to the After-School Plus Program Revolving Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature reaffirms its intent to support the after-school plus program revolving fund primarily through program participant fees. The legislature, however, finds that the program is also being supported in part by general fund appropriations and funds from the department of human services for child care for eligible low income children.

The purpose of this Act is to limit deposits into the revolving fund to only those funds that are collected as fees or charges for participation in the program and the interest earned on the revolving fund deposits.

SECTION 2. Section 302A-1149.5, Hawaii Revised Statutes, is amended to read as follows:

**"[H]§302A-1149.5[H] After-school plus program revolving fund.** (a) There is established in the state treasury the after-school plus program revolving fund to be administered by the department.

(b) The after-school plus program revolving fund shall consist of[~~;~~

(1) ~~Fees]~~ fees collected by the department for ~~[administering and operating]~~ the after-school plus program[~~;~~] and ~~[the provision of program services;~~

(2) ~~Legislative appropriations;~~

(3) ~~All]~~ all interest earned on the deposit or investment of moneys in the after-school plus program revolving fund[~~;~~ and

(4) ~~Any other moneys made available to the after-school plus program revolving fund from other sources].~~

(c) The department may establish appropriate fees and other charges to be assessed to each participant for ~~[the cost of administering and operating]~~ the after-school plus program. The revenues from those fees and charges shall be deposited into the revolving fund to be used ~~[to pay the costs of administering and operating]~~ for the program."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved April 23, 2008.)

## ACT 34

S.B. NO. 2141

A Bill for an Act Relating to Public Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 281-78, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall [~~except as permitted in section 291-3.4,~~] consume any liquor on any [~~public highway or any public sidewalk.~~];

- (1) Public highway, except as permitted in section 291-3.4;
- (2) Public sidewalk, including any sidewalk within a public housing project as defined in section 356D-1 or 356D-91; or
- (3) Common area of a public housing project as defined in section 356D-1 or 356D-91. For purposes of this paragraph, “common area” means roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exists<sup>1</sup> of the building or buildings, basements, yards, gardens, recreational facilities, parking areas, storage spaces, and other parts of the project normally in common use or other areas designated by the Hawaii public housing authority.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2009.

(Approved April 24, 2008.)

### Note

1. So in original.

## ACT 35

S.B. NO. 3074

A Bill for an Act Making an Emergency Appropriation to the Department of Health for the Emergency Medical Services and Injury Prevention System Branch.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Hawaii Constitution.

SECTION 2. Although funds were appropriated to the department of health for emergency medical services for the fiscal period beginning July 1, 2007, and ending June 30, 2008, a critical funding emergency now exists.

The purpose of this Act is to appropriate an additional \$507,539 in general funds and \$1,300,000 in special funds for fiscal year 2007-2008 to pay for ambulance service contract collective bargaining costs. This emergency appropriation is necessary to comply with collective bargaining increases negotiated by the ambulance service provider for Oahu.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$507,539 or so much thereof as may be necessary for fiscal year 2007-2008 to comply with collective bargaining increases negotiated by the ambulance service provider for Oahu; provided that these funds shall not be used for any purpose other than the collective bargaining increases.

SECTION 4. There is appropriated out of the emergency medical services special fund of the State of Hawaii the sum of \$1,300,000 or so much thereof as may be necessary for fiscal year 2007-2008 to comply with the collective bargaining increases negotiated by the ambulance service provider for Oahu; provided that these funds shall not be used for any purpose other than the collective bargaining increases.

SECTION 5. The sums appropriated in sections 3 and 4 shall be expended by the department of health.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 24, 2008.)

**ACT 36**

H.B. NO. 2908

A Bill for an Act Relating to Audit Recommendations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 23, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§23- Audit recommendations; annual report.** (a) Not later than twenty days prior to the regular session of 2009, and each regular session thereafter, the auditor shall submit a report to the legislature of each audit recommendation the auditor has made that is more than one year old and that has not been implemented by the audited agency. The report shall clearly identify:

- (1) The state agency audited;
- (2) The audit title and number that contained the recommendation;
- (3) A brief description of the recommendation;
- (4) The date that the audit was issued; and
- (5) The most recent explanation provided by the agency to the auditor on the status of the recommendation.

(b) Any agency that is notified by the auditor that it has not implemented a recommendation made pursuant to this chapter more than one year prior shall submit a written report to the auditor, the president of the senate, and the speaker of the house of representatives not later than thirty days after the notification explain-

ing why the audit recommendation was not implemented and the estimated date of implementation of the recommendation.”

SECTION 2. Section 23-4, Hawaii Revised Statutes, is amended to read as follows:

**“§23-4 Duties.** (a) The auditor shall conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions. The postaudits and all examinations to discover evidence of any unauthorized, illegal, irregular, improper, or unsafe handling or expenditure of state funds or other improper practice of financial administration shall be conducted at least once in every two years after the close of a fiscal year, and at any other time or times during the fiscal year as the auditor deems necessary or as may be required by the legislature for the purpose of certifying to the accuracy of all financial statements issued by the respective accounting officers and of determining the validity of expenditures of state or public funds.

(b) Each department, office, or agency of the State or political subdivision thereof that is the subject of an audit performed pursuant to this chapter shall provide updates on its progress in implementing the recommendations made by the auditor, at intervals prescribed by the auditor.

~~[(b)]~~ (c) The auditor, in conducting postaudits, to the extent practicable and applicable to the audit scope and objectives, shall review and assess the audited agency’s rules as defined in section 91-1.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Became law on April 24, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 37**

H.B. NO. 2163

A Bill for an Act Relating to Comptroller Supervision of Accounts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 40-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) With respect to the executive branch, except the University of Hawaii until June 30, 2011, the Hawaii tourism authority, and the department of education until June 30, 2011, the comptroller shall have complete supervision of all accounts. The comptroller shall preaudit all proposed payments of \$10,000 or more to determine the propriety of expenditures and compliance with executive orders and rules that may be in effect. When necessary, the comptroller shall withhold approval of any payment. Whenever approval is withheld, the department or agency concerned shall be promptly notified. With respect to the University of Hawaii, the Hawaii tourism authority, and the department of education, the comptroller shall issue warrants for the release of funds for the operating costs of the university, the Hawaii tourism

authority, or the department of education, as applicable, in amounts and at times mutually agreed upon by the governor or director of finance and the university, the Hawaii tourism authority, or department of education, as applicable; provided:

- (1) The amounts released shall not exceed the allotment ceilings for the respective funding sources of the university's or the department of education's appropriations established by the governor for an allotment period pursuant to section 37-34, or in the case of the Hawaii tourism authority, revenues received by the convention center enterprise special fund and the tourism special fund pursuant to section 237D-6.5; and
- (2) The comptroller may issue warrants as an advance from the state treasury to the University of Hawaii, the Hawaii tourism authority, and the department of education to establish a checking account and provide working capital in amounts and at times mutually agreed upon by the governor or director of finance and the University of Hawaii, the Hawaii tourism authority, and the department of education.

The University of Hawaii[,] shall preaudit all proposed payments of \$10,000 or more and the Hawaii tourism authority[,] and the department of education shall preaudit all proposed payments to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules as may be in effect. The University of Hawaii, the Hawaii tourism authority, and the department of education shall make disbursements for operating expenses from the amounts released by the comptroller and maintain records and documents necessary to support those disbursements at times mutually agreed upon by the university president, the executive director of the Hawaii tourism authority, or the superintendent of education, as applicable, and the comptroller; provided that when requested by the university, the Hawaii tourism authority, or department of education, the comptroller shall make all disbursements for the university, the Hawaii tourism authority, or department of education, as applicable, subject to available allotment. Funds released pursuant to this section shall be deposited by the university, the Hawaii tourism authority, or department of education, as applicable, in accordance with the provisions applicable to the director of finance by chapter 38. Except for moneys deposited by the Hawaii tourism authority in the convention center enterprise special fund pursuant to section 201B-8, and in the tourism special fund pursuant to section 201B-11, any interest earned on the deposit of funds released pursuant to this section shall be deposited in the state treasury at the end of each fiscal year."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval; provided that changes made to section 40-1(b), Hawaii Revised Statutes, shall not be repealed when that section is repealed and reenacted on June 30, 2010, pursuant to section 1 of Act 306, Session Laws of Hawaii 2006.

(Approved April 25, 2008.)

**ACT 38**

H.B. NO. 2436

A Bill for an Act Relating to Fireworks.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 132D-2, Hawaii Revised Statutes, is amended by amending the definition of "display fireworks" to read as follows:

““Display fireworks” means any fireworks designed primarily for exhibition display by producing visible or audible effects and classified as display fireworks or contained in the regulations of the United States Department of Transportation and designated as UN0333, UN0334, or UN0335, and includes salutes containing more than two grains (one hundred and thirty milligrams) of explosive materials, aerial shells containing more than forty grains of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as “consumer fireworks”. This term also includes fused setpieces containing components, which together exceed fifty milligrams of salute power. The use of display fireworks shall be prohibited for use by any person who does not have a display permit issued by a county.”

SECTION 2. Section 132D-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful for any person without a permit issued under section 132D-10 by a county fire department to:

- (1) Remove or extract the pyrotechnic contents from any fireworks;
- (2) Throw any ignited fireworks [~~from a moving vehicle; or~~]:
  - (A) From, at, or into a vehicle;
  - (B) At a person or an animal; and
  - (C) From above the first floor of any building;
 or
- (3) Set off, ignite, discharge, or otherwise cause to explode any fireworks:
  - (A) Above the first floor of any building;
  - (B) In any vehicle;
  - [~~(A)~~] (C) At any time not within the periods for use prescribed in section 132D-3[ ~~unless permitted pursuant to section 132D-10~~];
  - [~~(B)~~] (D) Within one thousand feet [~~from~~] of any operating hospital, licensed convalescent home, licensed home for the elderly, zoo, licensed animal shelter, or licensed animal hospital;
  - [~~(C)~~] (E) In any school building, or on any school grounds and yards without first obtaining authorization from appropriate school officials;
  - [~~(D)~~] (F) On any highway, alley, street, sidewalk, or other public way; in any park; on any public beach; in any officially designated forest or wildlife preserve; within fifty feet [~~from~~] of a canefield; or within one thousand feet [~~from~~] of any building used for public worship during the periods when services are held; [~~except as may be permitted pursuant to section 132D-10~~]; and
  - [~~(E)~~] (G) Within five hundred feet [~~from~~] of any hotel.”

SECTION 3. Section 132D-10, Hawaii Revised Statutes, is amended to read as follows:

“§132D-10 Permits. A permit shall be required for the purchase and use of:

- (1) Any consumer fireworks commonly known as firecrackers upon payment of a fee of \$25; [~~and~~]
- (2) Any aerial devices, display fireworks, or articles pyrotechnic for the purposes of section 132D-16 upon payment of a fee of \$110[~~;~~]; and
- (3) Any consumer fireworks for the purposes of section 132D-5 or for cultural uses that occur at any time other than during the periods prescribed in section 132D-3(1) upon a payment of a fee of \$25.”



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SECTION 4. Section 132D-12, Hawaii Revised Statutes, is amended to read as follows:

**“§132D-12 Sale to minors[-]; sale by minors: prohibited.** It shall be unlawful for any person to offer for sale, sell, or give any fireworks or articles pyrotechnic to minors, and for any minor to possess, purchase, sell, or set off, ignite, or otherwise cause to explode any fireworks or articles pyrotechnic, except as provided in section 132D-13.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 25, 2008.)

## ACT 39

H.B. NO. 2699

A Bill for an Act Relating to the Uniform Probate Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 560:2-706, Hawaii Revised Statutes, is amended to read as follows:

**“§560:2-706 Life insurance; retirement plan; [~~account with POD designation;~~] transfer-on-death registration; deceased beneficiary.** (a) Definitions. In this section:

“Alternative beneficiary designation” means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

“Beneficiary” means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

- (1) A class member if the beneficiary designation is in the form of a class gift; and
- (2) An individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

“Beneficiary designation” includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

“Class member” includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

“Stepchild” means a child of the decedent’s surviving, deceased, or former spouse, and not of the decedent.

“Surviving beneficiary” or “surviving descendant” means a beneficiary or a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 560:2-702.

(b) Substitute gift. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:

- (1) Except as provided in paragraph (4), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent;
- (2) Except as provided in paragraph (4), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants;
- (3) For the purposes of section 560:2-701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me", or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section; and
- (4) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(c) More than one substitute gift; which one takes. If, under subsection (b), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

- (1) Except as provided in paragraph (2), the property passes under the primary substitute gift;
- (2) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift;
- (3) In this subsection:

"Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

"Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

"Younger-generation beneficiary designation" means a beneficiary designation that:

- (A) Is to a descendant of a beneficiary of the primary beneficiary designation;
- (B) Is an alternative beneficiary designation with respect to the primary beneficiary designation;
- (C) Is a beneficiary designation for which a substitute gift is created; and
- (D) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

“Younger-generation substitute gift” means the substitute gift created with respect to the younger-generation beneficiary designation.

(d) Protection of payors.

- (1) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given;
- (2) The written notice of the claim ~~must~~ shall be mailed to the payor’s main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent’s estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents’ estates located in the judicial circuit of the decedent’s residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(e) Protection of bona fide purchasers; personal liability of recipient.

- (1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section;
- (2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(f) This section shall not apply to payable-on-death accounts established at a financial institution. The payment of payable-on-death accounts shall be governed by section 560:6-110.”

SECTION 2. Section 560:3-708, Hawaii Revised Statutes, is amended to read as follows:

**“§560:3-708 Duty of personal representative; supplementary inventory.** If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent’s death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to interested persons [interested in the new information.] who request it or who requested a copy of the original inventory.”

SECTION 3. Section 560:5-305, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) [The] Unless otherwise ordered by the court for good cause shown, the kokua kanawai shall interview the respondent in person and, to the extent that the respondent is able to understand:

- (1) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent’s rights at the hearing, and the general powers and duties of a guardian;
- (2) Determine the respondent’s views about the proposed guardian, the proposed guardian’s powers and duties, and the scope and duration of the proposed guardianship;
- (3) Inform the respondent of the right to employ and consult with a lawyer at the respondent’s own expense and the right to request a court-appointed lawyer; and
- (4) Inform the respondent that all costs and expenses of the proceeding, including respondent’s attorney’s fees, will be paid from the respondent’s estate.

(d) In addition to the duties imposed by subsection (c), the kokua kanawai shall:

- (1) Interview the petitioner and the proposed guardian;
- (2) Visit the respondent’s present dwelling, unless otherwise ordered by the court for good cause shown, and visit any dwelling in which the respondent will live if the appointment is made;
- (3) Obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent’s relevant physical or mental condition; and
- (4) Make any other investigation the court directs.”

SECTION 4. Section 560:5-307, Hawaii Revised Statutes, is amended to read as follows:

**“§560:5-307 Confidentiality of records.** The written report of a kokua kanawai and any professional evaluation are confidential and shall be sealed upon filing, but are available to:

- (1) The court;
- (2) The respondent without limitation as to use;

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- (3) The petitioner, the kokua kanawai, any nominated guardian, and the petitioner's, nominated guardian's, and respondent's lawyers, for purposes of the proceeding; and
- (4) Other persons for any purposes that the court may order for good cause."

SECTION 5. Section 560:5-311, Hawaii Revised Statutes, is amended by amending subsection(c) to read as follows:

"(c) Within fourteen days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification[-]; provided that, for good cause shown, the court may extend time for the order and notice to be sent or delivered to the ward, or otherwise modify or waive that requirement."

SECTION 6. Section 560:5-406, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) [~~The~~] Unless otherwise ordered by the court for good cause shown, the kokua kanawai shall interview the respondent in person and, to the extent that the respondent is able to understand:

- (1) Explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;
- (2) If the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;
- (3) Inform the respondent of the respondent's rights, including the right to employ or request that the court appoint a lawyer to consult with a lawyer at the respondent's own expense; and
- (4) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate unless the court otherwise directs."

SECTION 7. Section 560:5-407, Hawaii Revised Statutes, is amended to read as follows:

**"§560:5-407 Confidentiality of records.** The written report of a kokua kanawai and any professional evaluation are confidential and shall be sealed upon filing, but shall be available to:

- (1) The court;
- (2) The respondent without limitation as to use;
- (3) The petitioner, the kokua kanawai, any nominated conservator, and the petitioner's, nominated conservator's, and respondent's lawyers, for purposes of the proceeding; and
- (4) Other persons for any purposes that the court may order for good cause."

SECTION 8. Section 560:5-409, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Within fourteen days after entry of the order of appointment, the conservator shall deliver or send a copy of the order of appointment, together with a statement of the right to seek termination or modification, to the protected person, if the protected person has attained fourteen years of age and is not missing, detained, or

unable to return to the United States, and to all other persons given notice of the petition[-]; provided that, for good cause shown, the court may extend time for the order and statement to be sent or delivered to the protected person, or otherwise modify or waive that requirement.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2008.

(Approved April 25, 2008.)

## ACT 40

H.B. NO. 2517

A Bill for an Act Relating to Invasive Species.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that agriculture and conservation interests in the State are fighting to slow the invasion of alien species that are spreading from residential and commercial settings into agricultural areas and native forests.

Under section 150A-6.1, Hawaii Revised Statutes, the department of agriculture is responsible for maintaining a list of restricted plants. The department is currently in the process of updating its restricted plant list pursuant to this section. Under section 152-4, Hawaii Revised Statutes, the department of agriculture may designate certain plant species as noxious weeds. Section 150A-6.1, Hawaii Revised Statutes, provides that plants designated as noxious weeds are also considered to be restricted plants.

However, although the law allows the department of agriculture to regulate the importation and movement of restricted plants, it gives the department no authority to regulate the sale of restricted plants.

The legislature finds that to prevent further introductions of invasive species into the State, the statutory provisions authorizing the creation of the restricted plant list should be amended to regulate the sale of restricted plants. In addition, the law needs to be amended to recognize that a plant may be restricted either because the plant itself is a pest, or because the plant may be a host to pests like insects or pathogens.

The purpose of this Act is to, among other things:

- (1) Allow the department of agriculture to regulate or prohibit the sale in Hawaii of specific plants designated as restricted plants;
- (2) Allow the importation of noxious weeds only for research, by permit, and prohibit the sale of noxious weeds in the State; and
- (3) Clarify that plants can be placed on the restricted-plant list because the plant itself may be detrimental or potentially harmful to agriculture, horticulture, the environment, or animal or public health.

SECTION 2. Section 150A-6.1, Hawaii Revised Statutes, is amended to read as follows:

**“§150A-6.1 Plant import.** (a) The board shall maintain a list of restricted plants that require a permit for entry into the State. Restricted plants or any portion thereof shall not be imported into the State without a permit issued pursuant to rules.

(b) The department shall designate, by rule, as restricted plants, specific plants that may be detrimental or potentially harmful to agriculture, horticulture, the environment, or animal or public health, or that spread or may be likely to spread an infestation or infection of an insect, pest, or disease that is detrimental or potentially harmful to agriculture, horticulture, the environment, or animal or public health. In addition, plant species designated by rule as noxious weeds are designated as restricted plants.

(c) The department may regulate or prohibit the sale of specific plants on the list of restricted plants by rule.

(d) Noxious weeds may be imported only for research, by permit, and shall not be offered for sale or sold in the State.

~~[(e)]~~ (e) No person shall import, offer for sale, or sell within the State any plant or propagative portion of *Salvinia molesta* or *Salvinia minima* and [~~pistia~~] *Pistia stratiotes* [~~plants or portion thereof within the State~~].”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 28, 2008.)

ACT 41

S.B. NO. 3004

A Bill for an Act Relating to the Employees’ Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§88- Information from the State and counties. To fulfill its responsibilities under this chapter, the system may require any department or agency of the State or counties to furnish information to the system to carry out the purposes of this chapter. The system may specify the format in which the information shall be furnished. Without limitation of the foregoing, the system may require that information be furnished in electronic format and that information with respect to payroll and personnel transactions:

- (1) Allocate payments, including bonuses, salary adjustments, payments for compensatory time, and workers’ compensation, to monthly or other periods as requested by the system; and
- (2) Specify the purpose or nature of the payment.”

SECTION 2. Section 88-6, Hawaii Revised Statutes, is amended to read as follows:

“§88-6 Payment of refunds and retirement benefits. (a) Notwithstanding any other provision of this chapter:

- (1) All retirees and beneficiaries of the state retirement system or county pension funds shall be paid semimonthly; and effective January 1, 2003, all retirees and beneficiaries of the state retirement system who either retire or become beneficiaries after January 1, 2003, shall be paid monthly; and

- (2) Any ~~[retiree]~~ retirant or beneficiary whose benefit commences after June 30, 2001, shall designate a financial institution account into which the system shall be authorized to deposit their retirement benefit. This method of payment may be waived by the system if another method is determined to be more appropriate.

(b) Any member, former employee, retirant, or beneficiary to whom accumulated contributions or a hypothetical account balance, as defined in section 88-311, is payable after June 30, 2008, shall, if the payment will be greater than \$250 and the member, former employee, retirant, or beneficiary does not elect to rollover the payment into an eligible retirement plan, designate a financial institution account into which the system shall be authorized to deposit the payment. This method of payment may be waived by the system if another method is determined to be more appropriate.”

SECTION 3. Section 88-21, Hawaii Revised Statutes, is amended by amending the definitions of “beneficiary” and “service” to read as follows:

““Beneficiary”: the recipient of any benefit from the system or, as ~~[the]~~ context may indicate, the person or persons designated by a member, ~~former member, or retirant, or as provided by law~~ to receive the benefits payable in the event of the member’s, ~~former member’s, or retirant’s~~ death.

“Service”: service as an employee paid by the State or county, and also: service during the period of a leave of absence or exchange if the individual is paid by the State or county during the period of the leave of absence or exchange ~~[or if the individual is not paid by the State or county during the period of the leave of absence but]; and service during the period of an unpaid leave of absence or exchange if the individual is engaged in the performance of a governmental function or ~~[or] if the unpaid leave of absence is an approved leave of absence for professional improvement [with or]; provided that, for the period of the leave of absence or exchange without pay [and], the individual makes the same contribution to the system as the individual would have made if the individual had not been on [such] the leave of absence. Cafeteria managers and cafeteria workers shall be considered as paid by the State, regardless of the source of funds from which they are paid.”~~~~

SECTION 4. Section 88-45.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§88-45.5] Acceptance of rollovers and transfers from other plans. [Subject to rules adopted by the board of trustees, the system shall] The system may accept an eligible rollover distribution or a direct transfer of funds from [another qualified plan];~~

- (1) A tax-qualified retirement plan described in Section 401(a) of the Internal Revenue Code of 1986, as amended;
- (2) An annuity plan described in Section 403(a) of the Internal Revenue Code of 1986, as amended;
- (3) An annuity contract described in Section 403(b) of the Internal Revenue Code of 1986, as amended;
- (4) An individual retirement account described in Section 408(a) of the Internal Revenue Code of 1986, as amended;
- (5) An individual retirement annuity described in Section 408(b) of the Internal Revenue Code of 1986, as amended; or
- (6) An eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code of 1986, as amended, that is established and maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state,



in payment of all or a portion of any deposit a member is permitted to make with the system for credit for service, including the conversion of class C credited service to class H credited service. ~~[The]~~ Any rules adopted by the board ~~[of trustees]~~ pursuant to this section shall condition the acceptance of a rollover or transfer from another plan on the receipt from the other plan of information necessary to enable the system to determine the eligibility of any transferred funds for tax-free rollover treatment or ~~[other]~~ tax-free transfer treatment under federal income tax law.”

SECTION 5. Section 88-83.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Notwithstanding any other law to the contrary, the benefits payable to all employees who first become members on or after January 1, 1990, shall be subject to the limitations set forth in ~~[section]~~ Section 415 of the Internal Revenue Code of 1986, as amended~~[-]~~, applicable to governmental plans. The dollar limit in Section 415(b)(1)(A) of the Internal Revenue Code of 1986, as amended, shall be adjusted automatically under Section 415(d) of the Internal Revenue Code of 1986, as amended, effective January 1 of each year, as published in the Internal Revenue Bulletin. The automatic adjustment shall apply to members, former employees, retirants, and beneficiaries.”

2. By amending subsection (c) to read:

“(c) The system shall establish a benefit restoration plan for the payment of retirement benefits as permitted under ~~[section]~~ Section 415(m) of the Internal Revenue Code of 1986, as amended, as follows:

- (1) All ~~[retired members]~~ retirants and beneficiaries of the system whose pension has been limited by ~~[section]~~ Section 415 of the Internal Revenue Code shall receive a monthly benefit from the plan established pursuant to this subsection that is equal to the difference between the retirement benefit otherwise payable and the retirement benefit payable because of ~~[section]~~ Section 415 of the Internal Revenue Code of 1986, as amended;
- (2) Participation in the plan shall be determined for each plan year and shall cease whenever the retirement benefit is not limited by ~~[section]~~ Section 415 of the Internal Revenue Code of 1986, as amended;
- (3) The plan shall be funded on a plan-year-to-plan-year basis and shall not be used to pay any benefits payable in future years. Upon the recommendation of the system’s actuary, the required contribution amount shall be determined by the board ~~[of trustees]~~ and deposited in a separate fund from an allocation of employer contribution amounts pursuant to this chapter;
- (4) The board ~~[of trustee]~~ shall administer the plan and may make modifications to the benefits payable as may be necessary to maintain the qualified status of the plan under ~~[section]~~ Section 415(m) of the Internal Revenue Code of 1986, as amended.”

SECTION 6. Section 88-141, Hawaii Revised Statutes, is amended to read as follows:

“**§88-141 Computation of compensation earned or earnable.** In any case where it shall become necessary, for the purposes of sections 88-131 to 88-142, to determine the compensation or average compensation of a member of the system during any period of the member’s service in the armed forces, or during any period ~~[(not exceeding ninety days)]~~ immediately thereafter while the member was not an employee as defined in section 88-21, the member’s rate of compensation during

~~[any such]~~ the period shall, for the purposes of sections 88-131 to 88-142, be deemed to have been that which the member ~~[was receiving as such an employee immediately prior to the inception of]~~ would have received but for the member's service in the armed forces ~~[without any of the additional increments for length of service provided for by any classification or other law]."~~

SECTION 7. Section 88-286, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The surviving spouse or reciprocal beneficiary and children under the age of eighteen of a member at the time of the member's death shall be eligible for a death benefit if the member suffers either ~~[an]~~:

- (1) An ordinary death [while in service or on authorized leave without pay] after accumulating ten years of credited service and the member dies:
  - (A) While in service; or [an]
  - (B) While on authorized leave without pay;
  - or
- (2) An accidental death."

SECTION 8. Section 88-321, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Any member, except for a member described in subsection (c), who is in service on June 30, 2006, ~~[or who returns to service after June 30, 2006, and has vested benefit status in accordance with section 88-96(b);]~~ may elect to become a class H member effective July 1, 2006, ~~[or upon return to service;]~~ by filing an election form with the system in accordance with this section. The election shall be made prior to April 1, 2006, by members in service on February 28, 2006; provided that any member in service on February 28, 2006, who is absent from the ~~[State]~~ state on that date while in the military service of the United States, shall have thirty days after the member returns to the member's regular employment with the State or a county to make the election. The election shall be made by members entering or returning to service from March 1, 2006, through June 30, 2006, within sixty days of entering or returning to service. ~~[The election shall be made by members entering or returning to service after June 30, 2006, within thirty days of entering or returning to service.]~~ The election shall be irrevocable.

(b) Notwithstanding any other law to the contrary~~[, after June 30, 2006]~~:

- (1) A class C member who returns to service after June 30, 2006, and who does not return to service as a class A or a class B member shall become a class H member upon return to service; provided that, if the member is a former class A or class B member who received a refund of contributions picked up and paid by the member's employer pursuant to section 88-46(b), the member may not become a class H member and shall return to service as a class C member, unless the refund was made pursuant to section 88-96 or 88-271(b); ~~[and]~~
- (2) A class A or a class B member, who returns to service after June 30, 2006, but does not have vested benefit status as provided in section 88-96(b) and who does not return to service as a class A or class B member, shall become a class H member upon return to service and the member's credited service as a class A or B member shall be converted to class C credited service. The system shall return to the member the member's accumulated contributions if the member's accumulated contributions are \$1,000 or less at the time of distribution. If the member's accumulated contributions for the class A or B credited service that was converted to class C credited service are greater than \$1,000 and the member does not make written application, contemporaneously with

the member's return to service, for return of such contributions, the member, except as provided by section 88-341, may not withdraw the member's accumulated contributions for the class A or B credited service that was converted to class C credited service until the member retires or attains age sixty-two[-];

- (3) A class A member who returns to service after June 30, 2008, with vested benefit status and who does not return to service as a class B member shall return to service as a class A member; and
- (4) A class B member who returns to service after June 30, 2008, with vested benefit status and who does not return to service as a class B member shall return to service as a class A member."

SECTION 9. Section 88-322, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The board may permit the cost of conversion of class C credited service to class H credited service pursuant to subsection (a) or (b) to be paid by the member in any one of the following methods at the member's option:

- (1) By ~~after-tax~~ deductions from the member's compensation [~~pursuant to section 414(h)(2) of the Internal Revenue Code of 1986, as amended, under the employer pick-up plan under section 88-326~~]. An irrevocable payroll authorization filed by the member for a period not to exceed one hundred twenty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of the deductions shall be in an amount sufficient to amortize the actuarial cost of the conversion, together with interest at the rate of eight per cent a year, in level bi-monthly payments over the period specified in the irrevocable authorization. Service credited will be proportional on the basis of whole months. For example, a member electing to convert one hundred twenty months of service over sixty months and terminating after thirty and one-half months of deductions pursuant to this subsection, will have converted sixty months of class C service to class H service; or
- (2) By lump sum payment.

If the deductions from compensation do not commence, or if the lump sum payment is not paid to the system, within one hundred eighty days after the deadline for making the election to convert class C credited service to class H credited service, the election shall be deemed revoked. The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member's individual account and become part of the member's accumulated contributions."

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 11. This Act shall take effect on July 1, 2008; provided that section 1 shall take effect on July 1, 2010.

(Approved April 29, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 42

H.B. NO. 3197

A Bill for an Act Making an Emergency Appropriation to the Department of Transportation for the State Highway System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to appropriate additional funds from the state highway fund to cover the rising costs needed to properly operate and maintain the state highway system for fiscal year 2007-2008. The projected operational and maintenance requirements for fiscal year 2007-2008 will exceed the current authorized legislative appropriations for fiscal year 2007-2008. This additional appropriation from the state highway fund is necessary to ensure that the level of funding required to properly operate and maintain the state highway system and ensure the continued safety of the public, is available for fiscal year 2007-2008.

SECTION 3. There is appropriated out of the state highway fund, the sum of \$21,253,032 or so much thereof as may be necessary for fiscal year 2007-2008 to be expended by the department of transportation for the state highway system.

SECTION 4. The sum appropriated shall be expended by the department of transportation for the following highway programs:

TRN 501	\$16,354,092
TRN 511	\$ 514,656
TRN 531	\$ 524,420
TRN 541	\$ 89,099
TRN 551	\$ 25,522
TRN 561	\$ 563,896
TRN 595	\$ 3,181,347

SECTION 5. This Act shall take effect upon its approval.

(Approved April 29, 2008.)

## ACT 43

H.B. NO. 3140

A Bill for an Act Making an Emergency Appropriation to the Hawaii Public Housing Authority.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 67, Session Laws of Hawaii 2007, authorized the department of accounting and general services to raise the ceiling of the state risk management revolving fund to accommodate unanticipated increases in property insurance premiums and deductibles. The increased spending ceiling in Act 67 included in its assessment an additional \$777,000 that would be needed from the Hawaii public

housing authority for insurance liability. While Act 67 raised the risk management ceiling, it did not appropriate funds to the housing authority to cover this cost. The purpose of this Act is to make an emergency appropriation in general funds for the Hawaii public housing authority to repay the department of budget and finance for a loan made to address the risk management costs for liability insurance billed to the Hawaii public housing authority by the department of accounting and general services for fiscal year 2006-2007, in addition to payroll costs for the state public housing program. Both the federal and state public housing programs would normally fund these costs; however with the increased insurance costs in conjunction with financial constraints with both programs, funds are not readily available.

The federal low rent program houses some of the most vulnerable families in the State of Hawaii. Unemployed families can still be admitted to this program and have a roof over their heads. The United States department of housing and urban development provides a formula for housing authorities to calculate rent, which is thirty per cent of adjusted income. The average rent in federal public housing is \$237 per month.

The federal government provides public housing authorities with a subsidy for the operation and management of public housing to cover the shortfall between rents collected and operational expenses. However, in the past years the amount of the subsidy provided by the federal government has declined. Nationally, public housing authorities are eligible to receive \$4,600,000,000 in operating subsidies (a ten per cent increase over 2006); however, the United States congress has appropriated only \$3,860,000,000 or eighty-three per cent of the amount needed. In 2007, the Hawaii public housing authority received only eighty-three per cent of the operating subsidy for which it was eligible. After factoring in the cost of utilities, which is an increasing expense during the present era of rising energy prices, the subsidy provided by the federal government met only sixty-five per cent of the program's actual need. Consequently, there is a deficit for the federal low rent program for fiscal year 2007-2008.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,067,955 or so much thereof as may be necessary for fiscal year 2007-2008 to the Hawaii public housing authority to repay the department of budget and finance for a loan to pay for liability insurance and payroll costs and to address the budget deficits for the state family public housing program and federal low rent program; provided that the sums appropriated shall be allocated as follows:

- (1) \$1,600,000 for repayment to the department of budget and finance for a loan made to address risk management costs billed by the department of accounting and general services and a payroll shortfall;
- (2) \$1,080,000 for the payroll shortfall of the state single family housing program;
- (3) \$17,607 for unbudgeted increases in state single family housing program insurance costs; and
- (4) \$370,348 for unbudgeted increases in federal low rent program insurance.

SECTION 4. The sum appropriated shall be expended by the Hawaii public housing authority for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 29, 2008.)

## ACT 44

H.B. NO. 2301

A Bill for an Act Relating to Dentistry.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 448, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§448- Prohibition on ownership and interference.** (a) No dentist licensed pursuant to this chapter who engages in the practice of dentistry shall permit a person or entity, other than a dentist licensed pursuant to this chapter, to directly or indirectly own, direct, control, or interfere with the licensee’s practice of dentistry; provided that this section shall not apply to the State or any county, any legally incorporated eleemosynary dispensary or infirmary, private school, or welfare center.

(b) A licensed dentist shall not permit a non-dentist to:

- (1) Direct or interfere with the licensee’s clinical judgment and competent practice of dentistry;
- (2) Select a course of treatment for a patient, the procedures or materials to be used as part of the course of treatment, and the manner in which such course of treatment is carried out by the licensee;
- (3) Exercise control of the patient’s records; or
- (4) Prohibit or limit access to the dental office, facilities, and equipment necessary to provide service to the licensee’s patients.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon approval.

(Approved April 29, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 45

S.B. NO. 3200

A Bill for an Act Relating to Governmental Retention of Attorneys.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief justice’s designee, or to a legislative office by the speaker of the house of representatives and

the president of the senate jointly, and the attorney general declines to provide such representation on the grounds of conflict of interest, the attorney general shall retain an attorney for the court, judicial, or legislative office, subject to approval by the court, judicial, or legislative office;

- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;
- (13) By the auditor;
- (14) By the office of ombudsman;
- (15) By the insurance division;
- (16) By the University of Hawaii;
- (17) By the Kahoolawe island reserve commission;
- (18) By the division of consumer advocacy;
- (19) By the office of elections;
- (20) By the campaign spending commission;
- (21) By the Hawaii tourism authority, as provided in section 201B-2.5; or
- (22) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines<sup>1</sup> to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Became law on April 29, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Prior to amendment a comma appeared here.

**ACT 46**

S.B. NO. 2956

A Bill for an Act Relating to Milk.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 1988, the local dairy industry reached its highest production, valued at over \$33,300,000, and met all of the local demands for milk by consumers

in the state. Once ranked as one of the top three sectors of diversified agriculture, the dairy industry has experienced a steady decline, and in 2005, production value decreased to \$18,300,000. The producers currently are able to produce only enough milk to meet 30 per cent of consumer demand.

There are two milk sheds in the state - the Honolulu milk shed, which is<sup>1</sup> currently comprises only one dairy, and the Hawaii milk shed, which comprises two dairies - providing locally produced milk to the state. The price paid to the producers is based upon the utilization of the milk by the processor for the dairy products produced. The minimum price of class I milk (milk utilized for fluid consumption), is regulated by the department of agriculture and is currently set at \$31.50 per hundredweight in the Honolulu milk shed and \$29.53 per hundredweight in the Hawaii milk shed. However, a lower calculated price is paid to the producer for milk classified by the processor as class II milk and used by the processor for production of non-fluid dairy products, such as cottage cheese, yogurt, and ice cream. In October 2007, the producers were paid \$20.61 per hundredweight for class II milk.

The purpose of this Act is to help ensure the availability of fresh milk for fluid consumption in Hawaii.

SECTION 2. Section 157-1, Hawaii Revised Statutes, is amended by amending the definitions of "class I milk" and "shortage" to read as follows:

"Class I milk" includes all Hawaii-produced fresh milk or fresh milk constituents to be utilized in fluid form for human consumption, including pasteurized milk, cream, half-and-half, whole milk, skim milk, buttermilk, flavored milk, flavored skim milk, reconstituted or recombined milk, and filled milk. All [~~such~~] Hawaii-produced fresh milk [~~received by a processing plant~~], up to one hundred per cent of the total production quotas for all milk sheds in the state, shall be deemed to be utilized as class I unless utilization is [~~in class II~~] in an excess pool, or as plant shrinkage and route returns are proven.

"Shortage" means that [~~no milk is utilized for class II purposes~~] the production of Hawaii-produced milk is less than one hundred per cent of the total production quotas for all of the milk sheds in the state."

SECTION 3. Section 157-34, Hawaii Revised Statutes, is amended to read as follows:

**"§157-34 Determination of quotas.** (a) To promote a proper balance between supply and demand for milk, the board shall provide that the price to be paid to producers shall be based upon quota assigned each producer by the board, which quota shall be determined as follows: upon petition or chairperson's motion as set out in section 157-31, there shall be established an initial quota for each producer and producer-distributor, which shall be the average of the amount of milk that the producer or producer-distributor produced and delivered during the three-year period prior to January 1, 1967; provided that if a producer or producer-distributor had not been in business for such period, the board may also take into account the producer's or producer-distributor's prior production, contract and the producer's or producer-distributor's investment; and provided further that in any milk shed established subsequent to January 1, 1971, the board shall establish an initial quota for each producer and producer-distributor which shall be the average of the amount of milk that the producer or producer-distributor produced and delivered during the twelve-month period immediately prior to the date of petition or chairperson's motion, and may also take into account prior production, contract and investment factors where any of the producers or producer-distributors shall not have been in business for such twelve-month period. The board shall set the initial quota of a newly licensed producer or producer-distributor entering the market by taking into account all relevant



market conditions and the capabilities of the licensee. The board may adjust the initial quotas on a pro rata basis to meet changes in market requirements.

(b) For each milk shed in which quota control or price control or both is to be established, producers or producer-distributors whose dairies are located outside such milk shed shall participate in said quota control or price control, or both, for milk regularly supplied within the affected milk shed. However, in setting the minimum price for the milk the board shall consider only those costs incurred by producers located within the affected milk shed. Any milk delivered and utilized in a milk shed shall be subject to all the provisions and regulations applicable to that milk shed.

(c) When the amount of milk resold for human consumption as fluid milk does not exceed the sum of the quotas to be regularly supplied a distributor or producer-distributor, such fluid consumption milk shall be deemed taken ratably from the quotas actually supplied, and payment shall be made accordingly. The board shall determine which producers, not under written contract with a distributor or producer-distributor, are regular suppliers of milk. The remaining milk not used for human fluid consumption shall be paid for according to its use. However, when the producer-distributor or distributor resells milk, other than recombined or reconstituted milk, for fluid consumption in an amount in excess of all quotas assigned producers or producer-distributors regularly supplying the producer-distributor or distributor milk, then the fluid consumption prices shall apply pro rata to surplus milk, in the ratio that a producer's quota bears to the sum of the quotas. However, whenever there is quota milk available for purchase within the milk shed, surplus milk may not be used as milk to be resold for human consumption as fluid milk.

(d) From time to time when required to meet changes in conditions, the board may alter, revise, or adjust the total quota in any milk shed by rule, pursuant to section 157-31(a)(1), or by order, without regard for the notice and public hearing requirements of chapter 91, based on<sup>2</sup> specific formulas or criteria adopted under section 157-31(a)(2). An order to alter, revise, or adjust the total quota for the production of milk in a milk shed shall be subject to the notice requirements set forth in sections 157-33(a)(1) and 157-33(a)(2) for an order fixing minimum prices or salvage values.

(e) The board may [~~promulgate~~] adopt rules [~~and regulations~~] governing the transfer of quotas.

~~[(f) No producer or producer distributor shall have a quota exceeding twenty per cent of the total quotas established in the State. When quotas are established for a milk shed in the State, no producer or producer distributor shall have a quota exceeding twenty per cent of the total quota established in such milk shed; provided that any producer or producer distributor whose quota shall exceed twenty per cent in any such milk shed on June 7, 1971, may continue to maintain such quota in such milk shed, but may not thereafter increase its quota percentage in such milk shed or in any other milk shed. The board may, however, waive the requirements of this subsection within any milk shed when it finds that such action is necessary to insure the availability of an adequate supply of milk to the consuming public within such milk shed to promote stability of the dairy industry in said milk shed and will further be in the public interest. For the purpose of this section, an agricultural cooperative shall not be counted as a producer.]”~~

SECTION 4. The department of agriculture shall engage stakeholders of the Hawaii milk production industry to establish recommendations for short- and long-term initiatives to help ensure the availability of fresh milk for fluid consumption in Hawaii.

Based upon the results of the engagements, the department of agriculture shall, together with the University of Hawaii, college of tropical agriculture and hu-

man resources, prepare a written report and strategic plan recommending short and long term initiatives to help ensure the availability of fresh milk for fluid consumption in Hawaii. The written report and strategic plan shall be submitted to the legislature no later than twenty days prior to the commencement of the 2009 regular session.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 30, 2008.)

#### Notes

1. So in original.
2. Prior to amendment "the" appeared here.

## ACT 47

S.B. NO. 3005

A Bill for an Act Relating to Federal Tax Qualification of the Employees' Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The employees' retirement system of the State of Hawaii is intended to be a tax-qualified retirement plan under Section 401(a) of the Internal Revenue Code of 1986, as amended. Section 414(h)(2) of the Internal Revenue Code provides favorable tax treatment for employee contributions "picked up" (made by the employer on behalf of the employee) to a tax-qualified retirement plan established by a state or county or by an agency or instrumentality of a state or county. However, the tax-qualified status of the employees' retirement system may be jeopardized by the provisions of chapter 88, Hawaii Revised Statutes, that provide for optional membership in the system. These provisions include provisions allowing elective officers to exercise their option to join the system at any time during their term of office and provisions allowing elective officers and judges to withdraw from membership in the employees' retirement system while remaining in office. As defined by section 88-21, Hawaii Revised Statutes, an elective officer includes but is not limited to those persons elected to the county councils, the office of Hawaiian affairs, and the legislature.

This Act repeals the provisions of chapter 88, Hawaii Revised Statutes, that make membership in the system by elective officers optional and replaces those provisions with a new section to provide that an elective officer shall be a member of the employee's retirement system when elected for the first time (or, in the case of existing office holders, by October 1, 2008), unless the elective officer exercises a one-time irrevocable election to be excluded from membership in the employees' retirement system. This Act also sets forth the requirements that must be satisfied for retirees to return to service as elective officers without suspension of retirement benefits.

This Act also repeals the statutory provision that allows elective officers and judges who have reached the statutory cap on retirement benefits to withdraw from membership in the employees' retirement system by nominally retiring even though they remain in office.

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§88-A Membership of elective officers.** (a) An elective officer shall be a member of the employees’ retirement system; provided that an elective officer shall have a one-time election to be excluded from membership in the employees’ retirement system.

(b) Unless the elective officer is a member of the system, a former member of the system, or a retirant, an elective officer shall make the election to be excluded from membership in the system no later than thirty days following the elective officer’s taking office. The election shall be irrevocable. If the elective officer fails to make an election to be excluded from membership in the system within the period allowed for making the election, the elective officer shall become a member effective as of the date the elective officer takes office.

(c) Notwithstanding section 88-21, 88-98, 88-273(c), or 88-344, or any other law to the contrary, the retirement allowance of a retirant who returns to service as an elective officer shall not be suspended if the retirant:

- (1) Retired pursuant to section 88-73(d); or
- (2) Has been retired for at least twelve consecutive months prior to return to service and elects to have the retirement allowance continue. The election whether or not to have the retirant’s retirement allowance continue shall be irrevocable and shall be made no later than thirty days following the retirant’s first return to service as an elective officer.

If the retirant’s retirement allowance is not suspended, the retirant shall not become a member of the system and shall not earn additional service credit or gain any additional retirement benefits.

(d) An elective officer who retired pursuant to section 88-73(d) shall not be eligible for membership in the system while serving as an elective officer.”

SECTION 3. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of “employee” to read as follows:

““Employee”: any employee or officer of the State or any county, including inspectors, principals, teachers and special teachers, regularly employed in the public schools, cafeteria managers and cafeteria workers, apprentices and on-the-job trainees whether or not supported in whole or in part by any federal grants, members of the legislature and other elective officers, including the trustees of the office of Hawaiian affairs, year-round legislative employees who are employed on a full-time basis, probationary and provisional employees, any employee of the educational nonprofit public corporation as provided in section 88-49.7, per diem employees and others who are made eligible by reason of their employment to membership in the system by or pursuant to any other provision of law, but excluding:

- (1) Per diem employees who elect to withdraw or not to become members as provided in section 88-42;
- (2) [~~Members of the legislature~~] Elective officers who do not elect to be members as provided in section [~~88-42;~~] 88-A;
- (3) Session employees of the legislature employed after October 31, 2006, in accordance with section 88-54.2; and
- (4) Persons excluded by rules of the board pursuant to section 88-43.

An individual is an employee during the period of a leave of absence if the individual is in service, as defined in this part, during the period of the leave of absence and the board shall determine who are employees within the meaning of this part.”

SECTION 4. Section 88-42, Hawaii Revised Statutes, is amended to read as follows:

**“§88-42 Membership generally.** Except as otherwise provided in this part, all employees of the Territory or any county on July 1, 1945, shall be members of the system on ~~[such]~~ that date, and all persons who thereafter enter or reenter the service of the State or any county shall become members at the time of their entry or reentry.

Per diem workers shall become eligible for membership on January 1, 1952, and all persons who are employed as per diem workers after December 31, 1951, shall become members of the system. Any person who was a per diem worker before January 1, 1952, ~~[shall not,]~~ so long as the person is employed as a per diem worker, shall not be required to become a member or to remain a member if the person has elected before October 2, 1953, to withdraw as a member.

Members of the legislature shall become eligible for membership on July 1, 1951. Any member of the legislature in service on July 1, 1951, or thereafter entering ~~[or reentering]~~ the legislature, ~~[may]~~ shall become a member ~~[upon the legislator's own election.]~~ or elect to be excluded from membership in the system as provided in section 88-A.”

SECTION 5. Section 88-43, Hawaii Revised Statutes, is amended to read as follows:

**“§88-43 Persons ineligible for membership[; optional membership].** Except with respect to faculty members or lecturers employed on one or more campuses of the University of Hawaii who hold multiple part-time appointments or positions, in such capacities, any of which may be less than one-half of a full-time equivalent but all of which, when added together, aggregate to at least one-half of a full-time equivalent position, the board ~~[of trustees]~~ may deny membership to any class of part-time employees or persons engaged in temporary employment of three months or less~~[, or it may, in its discretion, make optional with persons in such classes their individual entrance into membership];~~ provided that no officer or employee entering service after January 1, 1928, who is entitled to become a member of any pension system under part III shall be entitled to become a member of the system.

~~[Elective officers shall be eligible for membership, and their individual entrance into membership shall be at their option.]”~~

SECTION 6. Section 88-54.5, Hawaii Revised Statutes, is amended to read as follows:

**“§88-54.5 Service while a member of the board of trustees of the office of Hawaiian affairs.** Notwithstanding any provisions of section 10-9 that may previously have precluded a member of the board of trustees of the office of Hawaiian affairs from participating as a member of the employees' retirement system:

- (1) Any trustee of the office of Hawaiian affairs in service on July 1, 2002, may become a member ~~[upon the trustee's election]~~ in accordance with section 88-43 by October 1, 2002;
- (2) Any trustee of the office of Hawaiian affairs elected or appointed after July 1, 2002, ~~[may]~~ shall become a member ~~[upon the trustee's election]~~ or elect to be excluded from membership in the system in accordance with section ~~[88-43;]~~ 88-A;
- (3) Any service as a trustee of the office of Hawaiian affairs during the period of July 1, 1993, through July 1, 2002, if claimed by the member, shall be credited in the member's class at the time the service is acquired; provided that membership service shall be credited in accordance with sections 88-59, 88-272, and 88-324; and

- (4) Any former trustee of the office of Hawaiian affairs who retired from service prior to July 1, 2002, shall not be entitled to claim membership service as a trustee during the period July 1, 1993, through June 30, 2002.”

SECTION 7. Section 88-59, Hawaii Revised Statutes, is amended to read as follows:

**“§88-59 Acquisition of membership service.** (a) Under rules as the board ~~[of trustees]~~ may adopt, any member may file with the board a statement of all service as an employee or other service paid for by the State or a county rendered prior to the member’s last becoming a member that is not credited to the member, for which the member claims prior service credit, and also a statement of the services for which the member claims membership service credit and for which the member agrees to have additional deductions made from the member’s compensation or to make a lump sum payment as described in this section.

(b) After the filing of the statement, the board shall verify the service claimed and determine the service credit allowable. Verified prior service shall be credited. Verified membership service shall be paid for by the member in any one of the following methods, at the member’s option:

- (1) By deductions from the member’s compensation pursuant to ~~[section]~~ Section 414(h)(2) of the Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-46. An irrevocable payroll authorization filed by the member for a period not to exceed sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The member may elect to have:
  - (A) Deductions from the member’s compensation of twice the contribution rate provided for in section 88-45 over a period equal to the period for which membership service credit is allowable not to exceed sixty months; or
  - (B) Deductions from the member’s compensation of one and one-half times the contribution rate provided for in section 88-45 over a period equal to twice the period for which membership service credit is allowable not to exceed sixty months; ~~[or]~~

or
- (2) By lump sum payment of contributions computed at the contribution rate provided for in section 88-45 applied to the member’s monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable; provided that after July 1, 1982, this method shall not be available to any new member with fewer than five years of membership service exclusive of any previous service acquired under paragraph (1).

The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member’s individual account and become part of the member’s accumulated contributions.

(c) Membership service credit, in addition to any other service credited to the member, shall be allowed for the period for which the deductions from compensation or lump sum payment have been made as described in this section.

(d) The contribution rates under section 88-45 shall be reduced by one and eight-tenths per cent for any service being claimed that was rendered prior to July 1, 1961.

~~[Any member of the legislature who reenrolls as an active member in accordance with section 88-62 and who desires to obtain membership service for a~~

period of service as a member of the legislature during which the member received a retirement allowance, in addition to complying with this section, shall refund while a reenrolled active member the retirement allowance received during the period of legislative service.]”

SECTION 8. Section 88-61, Hawaii Revised Statutes, is amended to read as follows:

**“§88-61 Termination of membership.** (a) Except as otherwise provided by section 88-96, any member absent from service for four calendar years following the calendar year in which the member’s employment terminated shall cease to be a member, and the former member’s credited service shall be forfeited.

(b) Any member who withdraws the member’s contributions, becomes a retiree, or dies, ceases to be a member as of the date of withdrawal, retirement, or death.

~~[(c) The membership of an elective officer or judge in the system may be terminated upon election of the member to retire whenever the allowance for the member reaches seventy-five per cent of the member’s average final compensation. The member’s right to receive the retirement allowance prescribed in section 88-74 after the member’s future separation from service as provided in section 88-73 shall vest on the date of the election. Upon the date of the election, the member shall be entitled to receive the portion of the accumulated contributions, if any, which would be required to be returned to the member under section 88-74(3) as if the member’s retirement allowance had commenced on that date, and after the date of the election the member shall not be allowed or required to make any future contributions.]”~~

SECTION 9. Section 88-73, Hawaii Revised Statutes, is amended to read as follows:

**“§88-73 Service retirement.** (a) Any member who has at least five years of credited service and who has attained age fifty-five or any member who has at least twenty-five years of credited service or any member who has at least ten years of credited service, which includes service as a judge before July 1, 1999, an elective officer, or a legislative officer, shall become eligible to receive a retirement allowance after the member has terminated service.

(b) Any member who first earned credited service as a judge after June 30, 1999, and who has at least five years of credited service and has attained age fifty-five or has at least twenty-five years of credited service shall become eligible to receive a retirement allowance after the member has terminated service.

(c) A member may retire upon the written application specifying the date of retirement, which shall not be less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

(d) Any member of the legislature who attains age sixty-five may retire and receive a service retirement allowance although the member continues to fill the elective position.

~~[(e) For the purpose of computing or determining benefits for an elective officer or judge, or any beneficiary of either, the date upon which the elective officer or judge makes an election to retire, as provided by section 88-61(c), after attaining an allowance of seventy-five per cent of the member’s average final compensation, shall be used as the date the member is eligible to receive a service retirement benefit. The elective officer or judge may continue in active service, but shall not receive a retirement allowance until termination of active service. Upon leaving active ser-~~

~~vice, the elective officer or judge shall receive the retirement allowance provided for in section 88-74, together with the post retirement allowances provided for in section 88-90, effective on the first day of a month except the month of December when retirement benefits shall be effective on the first or last day of the month. Post retirement allowances shall be computed from the date of the election as though the elective officer or judge had left active service on that day.~~

(f) (e) In the case of a class A or B member who also has prior credited service under part VII or part VIII, total credited service as a class A, class B, class C, and class H member shall be used to determine the eligibility for retirement allowance.”

SECTION 10. Section 88-251, Hawaii Revised Statutes, is amended to read as follows:

**“§88-251 Applicability.** The following provisions of part II shall apply to this part:

- (1) Subpart A, except the definitions provided in section 88-21, unless expressly adopted in section 88-261;
- (2) Subpart B, except sections 88-45, 88-45.5, 88-46, 88-48, 88-52, 88-59, 88-59.5, [88-59.6,] 88-61, and 88-62;
- (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74, 88-74.6, 88-75, 88-76, 88-80, 88-83, 88-84, 88-85, 88-87, 88-88, 88-96, 88-97, and 88-98;
- (4) Subpart D, except sections 88-112 and 88-113; and
- (5) Subpart E.”

SECTION 11. Section 88-301, Hawaii Revised Statutes, is amended to read as follows:

**“§88-301 Applicability.** The following provisions of part II of this chapter shall apply to this part:

- (1) Subpart A;
- (2) Subpart B, except sections 88-45, 88-46, 88-48, 88-52, 88-59, 88-59.5, [88-59.6,] 88-61, and 88-62;
- (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74, 88-74.6, 88-75, 88-76, 88-79, 88-80, 88-83, 88-84, 88-85, 88-88, 88-96, 88-97, and 88-98;
- (4) Subpart D; and
- (5) Subpart E.”

SECTION 12. Section 88-59.6, Hawaii Revised Statutes, is repealed.

SECTION 13. Elective officers in office on the effective date of this Act, who are not retirants of the employees’ retirement system, shall be deemed to have exercised the one-time election under subsection (a) of the new section added to chapter 88, Hawaii Revised Statutes, by section 2 of the Act.

SECTION 14. Elective officers who are retirants of the employees’ retirement system of the State of Hawaii shall make an election, not later than the effective date of this Act, whether or not to have their retirement allowance continue as provided by section 2 of this Act. If the elective officer makes no election, the elective officer’s retirement allowance shall continue. An elective officer whose retirement allowance continues pursuant<sup>1</sup> this section shall not be eligible for membership in the employees’ retirement system of the State of Hawaii while serving as an elective officer.

SECTION 15. The requirement of section 2 of this Act, that a retirant who returns to service as an elective officer shall have been retired for a least twelve consecutive months prior to return to service to be eligible to make an election to have the retirant's retirement allowance continue, shall not be applicable to any retirant who returns to service as an elective officer prior to January 3, 2009, provided that the retirant did not retire as an elective officer.

SECTION 16. Sections 8 and 9 of this Act shall not be applied to affect the rights of any retirants, as defined in section 88-21, Hawaii Revised Statutes, who retired prior to the effective date of this Act, or rights of the beneficiaries or survivors of those retirants.

SECTION 17. In codifying the new section added to chapter 88, Hawaii Revised Statutes, by section 2<sup>1</sup> this Act, the revisor of statutes shall substitute an appropriate section number for the letter used in the designation of the new section and the references to that new section in this Act.

SECTION 18. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 19. This Act shall take effect on October 1, 2008.

(Approved April 30, 2008.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 48

S.B. NO. 2569

A Bill for an Act Relating to the Museum of Hawaiian Music and Dance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the museum of Hawaiian music and dance committee, constituted pursuant to Act 230, Session Laws of Hawaii 2007, is presently commencing its study to determine the appropriate type of institution that should be established, as well as the details thereto, for a museum of Hawaiian music and dance. The legislature further finds that the museum of Hawaiian music and dance committee needs an extension of time to file its reports in order that a thorough and detailed study can be made.

The purpose of this Act is to extend the time for the museum of Hawaiian music and dance committee to file its reports as required under Act 230, Session Laws of Hawaii 2007.

SECTION 2. Act 230, Session Laws of Hawaii 2007, is amended as follows:

1. By amending subsection (d) of section 2 to read:  
“(d) The committee shall cease to exist on June 30, ~~[2008.]~~ 2009.”
2. By amending section 3 to read:

“SECTION 3. (a) The committee shall submit [~~a~~] an interim report of its findings and recommendations to the legislature no later than [~~twenty days prior to the convening of the regular session of 2008.]~~ September 15, 2008.



## ACT 49

(b) The committee shall submit a final report to the legislature [~~prior to June 30, 2008,~~] no later than twenty days prior to the convening of the regular session of 2009, that contains:

- (1) A detailed account of how all funds provided for the committee were expended; and
- (2) Plans for the future direction of the museum of Hawaiian music and dance.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2008.)

## ACT 49

S.B. NO. 3228

A Bill for an Act Relating to Adjusting the Annual Pensions of Retired Patient Employees at Hansen’s Disease Facilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 326-23, Hawaii Revised Statutes, is amended to read as follows:

**“§326-23 Pensions for patient employees at facilities.** (a) All patient employees or patient laborers at every facility maintained for the treatment and care of persons with Hansen’s disease shall be entitled, upon retirement after twenty years or more service with the department of health, to a pension in an amount which shall be equal to sixty-six and two-thirds per cent of the monthly wage or salary which the patient was receiving at the time of retirement, or to a pension in an amount which shall be equal to sixty-six and two-thirds per cent of the average monthly wage or salary which the patient employee was receiving during the last twelve months of employment at the department of health, whichever is higher. For the period from July 1, 2007, to June 30, 2008, the pension amounts shall be adjusted as follows:

- (1) Retired patient employees receiving less than \$4,000 annually shall be granted a five per cent increase;
- (2) Retired patient employees receiving \$4,000 or more but less than \$5,000 annually shall be granted a four per cent increase; and
- (3) Retired patient employees receiving \$5,000 or more annually shall be granted a 2.5 per cent increase.

For the period from July 1, 2008, to June 30, 2009, all retired patient employees shall be granted a 2.5 per cent increase. Thereafter, the pension amounts shall remain as adjusted effective for the period ending June 30, 2009.

(b) Patient employees may use service with any state department or agency not exceeding five years which has not been credited under the state retirement system in lieu of service with a facility maintained for the treatment and care of persons with Hansen’s disease to satisfy the requirements of [~~the preceding paragraph;~~] subsection (a); provided that the service shall be authenticated by official records of the department where service was performed.

(c) When work is available at Kalaupapa which may be fulfilled by patient residents of the facility under section 326-21 and there are no applicants for those positions from among the eligible patients, pensioned patients who are in residence at Kalaupapa may be reemployed, not to exceed nineteen hours per week, without

relinquishing the pension granted to them under this section. Furthermore, notwithstanding any other law relating to this subject, that reemployment shall not result in suspension or termination of payment of the pension granted originally or serve to increase, decrease, or alter the pension in any way.”

SECTION 2. In the event a retired patient employee has died after July 1, 2007, and before the payment of the pension adjustment provided for in this Act, the amount of the increase owed to that person from July 1, 2007, until the date of death shall be paid to the person’s estate.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval and shall be retroactive to July 1, 2007.

(Approved April 30, 2008.)

## ACT 50

S.B. NO. 3240

A Bill for an Act Relating to Motor Vehicle Driver’s License.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§286- Expiration of licenses; out-of-country active duty military personnel.** Notwithstanding section 286-106, the expired driver’s license of a member of any component of the United States armed forces who is on active federal service and whose driver’s license expired while deployed outside the United States, shall remain valid for ninety days after the service member’s return to the United States.”

SECTION 2. Section 286-106, Hawaii Revised Statutes, is amended to read as follows:

**“§286-106 Expiration of licenses.** Every driver’s license issued under this part, except for a provisional license issued under section 286-102.6 which shall expire on the date of the provisional licensee’s nineteenth birthday, whether an original issuance or a renewal, shall expire on the first birthday of the licensee occurring not less than ~~six~~ eight years after the date of the issuance of the license, unless sooner revoked or suspended; provided that the license shall expire on the first birthday of the licensee occurring not less than four years after the date of issuance if at the time the licensee is twenty-four years of age or younger; provided further that the license shall expire on the first birthday of the licensee occurring not less than two years after the date of the issuance of the license if at that time the licensee[:

- (1) ~~Is] is~~ is seventy-two years of age or older[; or
- (2) ~~Exhibits a physical condition or conditions that the examiner of drivers reasonably believes has impaired the driver’s ability to drive, unless the licensee:~~
  - (A) ~~Obtains a certificate from a licensed physician that the licensee’s physical condition or conditions do not impair the licensee’s ability to drive; or~~

~~(B) Is able to correct the physical impairment, or is able to drive safely by using a vehicle adapted to overcome the physical impairment to the satisfaction of the examiner of drivers].~~

The examiner of drivers may issue a license for a shorter period if the licensee has a physical condition or conditions that the examiner of drivers reasonably believes may impair the driver’s ability to drive.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval; provided that Section 2 shall take effect on November 3, 2008; provided further that the amendments made to section 286-106, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on January 9, 2011, pursuant to section 15 of Act 72, Session Laws of Hawaii 2005.

(Approved April 30, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 51**

H.B. NO. 2254

A Bill for an Act Relating to Banks and Financial Institutions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to prohibit the use of the name or trademark of a financial institution or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without written permission and in a manner that would lead a reasonable person to believe that the material or solicitation originated from a financial institution or its affiliates or subsidiaries. This Act further authorizes a civil penalty of up to \$10,000 for each violation.

SECTION 2. Chapter 412, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§412:1- Financial institution name fraud.** (a) No person shall use the name or trademark of a financial institution, as defined in section 412:1-109, or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if the marketing materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, is related to, or is the responsibility of the financial institution or its affiliates or subsidiaries.

(b) The commissioner may impose a civil penalty of up to \$10,000 for each violation of this section.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2008.)

## Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 52

S.B. NO. 3185

A Bill for an Act Relating to Cancer.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the Hawaii breast and cervical cancer control program was established in 1997 to provide breast and cervical cancer screening. Since that time, the Hawaii breast and cervical cancer control program, administered by the department of health, and the breast and cervical cancer treatment program, administered by the department of human services, have worked together to help screen and treat women in Hawaii for breast and cervical cancer.

Chapter 346, Hawaii Revised Statutes, was amended in 2001 to provide for a breast and cervical cancer treatment program to be administered by the department of human services for women who are not eligible for federally-funded medicaid coverage as provided by the Breast and Cervical Cancer Prevention and Treatment Act of 2000. In addition to treatment, breast and cervical cancer screening, education, and outreach are important services in promoting women's health.

The purpose of this Act is to reach more women who are eligible to be screened for breast and cervical cancers by:

- (1) Requiring the department of human services to collaborate with the department of health to assist with breast and cervical cancer screening, education, and outreach; and
- (2) Transferring \$150,000 from the department of human services to the department of health for cervical and breast cancer screening, education, and outreach.

SECTION 2. Section 346-59.2, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§346-59.2]]~~ **Breast] Comprehensive breast and cervical cancer [treatment] control program.** (a) There is established the comprehensive breast and cervical cancer [treatment] control program, to be administered by the department of human services~~[-]~~ in collaboration with the department of health, to assist women who have been diagnosed with breast or cervical cancer by the Hawaii ~~[Breast and Cervical Cancer Control Program,]~~ comprehensive breast and cervical cancer control program, but who are not eligible for federally-funded medicaid coverage as provided by the Breast and Cervical Cancer Prevention and Treatment Act of 2000.

(b) Under the comprehensive breast and cervical cancer [treatment] control program, the department of human services shall provide state-funded medical assistance, as appropriated by the legislature, to women who are diagnosed with breast or cervical cancer through the Hawaii ~~[Breast and Cervical Cancer Control Program,]~~ comprehensive breast and cervical cancer control program, but who are not eligible for federal medicaid coverage; provided that the person either:

- (1) Is a resident alien of Hawaii who is not eligible for medicaid; or
- (2) Would be eligible under medicaid except that the person has health care coverage that specifically does not provide coverage for cancer treatment.

(c) The department of health shall work collaboratively with the department of human services to assist in and support the screening, education, and outreach process regardless of a woman's eligibility for medicaid coverage.

(d) Under the comprehensive breast and cervical cancer control program, the department of health shall provide state-funded medical assistance, as funded by the legislature, to:

- (1) Screen women for breast and cervical cancer;
- (2) Educate women regarding the risks associated with breast and cervical cancer; and
- (3) Provide outreach to women who are at risk for breast and cervical cancer.”

SECTION 3. Of the funds appropriated out of the general revenues of the State of Hawaii to the department of human services in Act 213, Session Laws of Hawaii 2007, for the comprehensive breast and cervical cancer control program, pursuant to section 346-59.2, Hawaii Revised Statutes, the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2008-2009 for cervical and breast cancer screening, education, and outreach shall be transferred to the department of health for the purposes specified under this Act.

SECTION 4. The department of health and the department of human services shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session on the expenditure of all funds for the comprehensive breast and cervical cancer control program.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2008.

(Approved May 1, 2008.)

**ACT 53**

S.B. NO. 2782

A Bill for an Act Relating to Metal.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§708- Theft of beer keg.** (1) A person commits the offense of theft of beer keg if the person commits theft of a beer keg.

(2) For the purposes of this section, “beer keg” means a metal container used to hold five gallons or more of liquid that is stamped, engraved, stenciled, or otherwise marked with the name of a brewery manufacturer; provided that a deposit beverage container, as defined under section 342G-101, shall not be considered a beer keg.

(3) Theft of beer keg is a misdemeanor.”

SECTION 2. Section 445-231, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Beer keg” means a metal container used to hold five gallons or more of liquid that is stamped, engraved, stenciled, or otherwise marked with the name of a brewery manufacturer; provided that a deposit beverage container, as defined under section 342G-101, shall not be considered a beer keg.”

SECTION 3. Section 445-233, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) If the scrap presented for purchase is copper, or a beer keg, in whole or in part, the seller shall provide a copy of a receipt that describes, with particularity:

- (1) The exact item that is being offered for sale;
- (2) Who issued the receipt;
- (3) The date of sale of the item prior to the item’s being offered to the scrap dealer; and
- (4) The price, if any, of the item when obtained by the seller.”

2. By amending subsections (d), (e), and (f) to read:

“(d) If the seller does not provide a copy of the receipt or the notarized declaration as required by subsections (b) and (c), the scrap dealer shall not purchase the copper, or beer keg, in whole or in part, and shall report the attempted sale to the police.

(e) If the scrap dealer purchases any copper[;] or beer keg, in whole or in part, the scrap dealer shall take a photograph or photographs of all of the copper or any beer keg offered for sale.

(f) The scrap dealer shall also require the seller to verify the seller’s identity by presenting a valid photo identification card or license issued by a federal or state government agency authorized to issue [~~such~~] valid identification. If the scrap being offered for sale is copper, or a beer keg, in whole or in part, the scrap dealer shall:

- (1) Take a photograph of the seller; or
- (2) Make a photocopy of the identification card or license of the seller.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 2008, and shall be repealed on July 1, 2009; provided that sections 445-231 and 445-233, Hawaii Revised Statutes, shall be reenacted in the form in which those sections read on the day before the effective date of Act 197, Session Laws of Hawaii 2007.

(Approved May 1, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 54

S.B. NO. 3006

A Bill for an Act Relating to Business Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 415A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§415A- Trustees or receivers for dissolved professional corporations; appointment; powers; duties.** (a) When any professional corporation organized and authorized to issue shares under the laws of this State shall be or shall have been

dissolved or shall cease or shall have ceased to exist, the circuit court, upon application of any creditor, stockholder, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the persons responsible for settling the unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.

(b) The relief provided in this section shall be in addition to, and shall not limit or diminish, any remedies otherwise available under the common law or other state or federal statutes or rules. In the event of a conflict between this section and any common law or other state statutes or rules on the subject, the more beneficial provisions favoring the applicant shall prevail.”

SECTION 2. Section 414-402, Hawaii Revised Statutes, is amended to read as follows:

**“§414-402 Procedure for and effect of administrative dissolution[-] and effect of expiration.** (a) If the department director determines that one or more grounds exist under section 414-401 for dissolving a corporation, the department director shall give written notice of the department director’s determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director’s written notice, the department director shall administratively dissolve the corporation by signing a decree of dissolution that recites ~~[the ground]~~ any grounds for dissolution and its effective date. The decree shall be filed in the department director’s office.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

~~(e) [Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee’s hands as trustee, a sum equal to any penalty imposed under section 414-473. If a trustee is not appointed, the last directors of the dissolved corporation shall be and act as trustees for the creditors, claimants, and shareholders of the dissolved corporation with full powers to settle its affairs.]~~

~~(f) A corporation whose articles of incorporation have expired shall cease to exist by operation of law.~~

~~(g) If a corporation was dissolved due to the expiration of its period of duration, the~~ If a corporation’s period of duration specified in its articles of incorporation has expired, the corporation may continue its corporate existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.

~~(f) The corporation, at any time within two years of [such dissolution,] the~~ expiration of its period of duration, may amend its articles of incorporation to extend

its period of duration, and upon the amendment, the corporation may resume carrying on its business as if the ~~[dissolution]~~ expiration had never occurred; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if that name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of ~~[corporate existence]~~ its period of duration shall be allowed only upon the registration of a new name by the corporation pursuant to the amendment provisions of this chapter.”

SECTION 3. Section 414-433, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign corporation may apply for a certificate of authority to transact business in this ~~[State]~~ state by delivering an application to the department director for filing. The application shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this ~~[State,]~~ state, a corporate name that satisfies the requirements of section 414-436;
- (2) The name of the state or country under whose law it is incorporated;
- (3) Its date of incorporation ~~[and period of duration];~~
- (4) The mailing address of the corporation’s principal office, the street address of its registered office in this ~~[State,]~~ state, and the name of its registered agent at its registered office in this ~~[State,]~~ state; and
- (5) The names and usual business addresses of its current directors and officers.”

SECTION 4. Section 414D-160, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in subsection (d), a corporation may indemnify a former or current director made a party to a proceeding by reason of the fact that the individual was or is a director, against liability incurred in the proceeding if:

- (1) The individual conducted the individual’s self in good faith; and
- (2) The individual reasonably believed:
  - (A) In the case of conduct in an official capacity, that the individual’s conduct was in the corporation’s best interests;
  - (B) In all other cases, the individual’s conduct, at a minimum, did not oppose the corporation’s best interests; ~~[and]~~
- and
- (3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual’s conduct was unlawful.”

SECTION 5. Section 414D-249, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-249 Procedure for and effect of administrative dissolution[-] and effect of expiration.** (a) If the department director determines that one or more grounds exist under section 414D-248 for dissolving a corporation, the department director shall give written notice of the department director’s determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director’s written notice, the department director may administratively dissolve the corporation by signing a decree of dissolution that re-



cites ~~[the ground or]~~ any grounds for dissolution and its effective date. The decree shall be filed in the department director's office.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under section 414D-245 and notify its claimants under sections 414D-246 and 414D-247.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

~~(e) [Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If a trustee is not appointed, the last directors of the dissolved corporation shall be and act as trustees for the creditors, claimants, and members of the dissolved corporation with full powers to settle its affairs.]~~

~~(f) A corporation whose articles of incorporation have expired shall cease to exist by operation of law.~~

~~(g) If a corporation was dissolved due to the expiration of its period of duration, the) If a corporation's period of duration specified in its articles of incorporation has expired, the corporation may continue its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its business and affairs under section 414D-245 and notify claimants under sections 414D-246 and 414D-247.~~

~~(f) The corporation, at any time within two years of the [dissolution,] expiration of its period of duration, may amend its articles of incorporation to extend its period of duration and, upon the amendment, the corporation may resume carrying on its [business] activities as if the [dissolution] expiration had never occurred; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if that name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of [corporate existence] its period of duration shall be allowed only upon the registration of a new name by the corporation pursuant to the amendment provisions of this chapter."~~

SECTION 6. Section 414D-273, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A foreign corporation may apply for a certificate of authority to transact business in this [State] state by delivering an application to the department director for filing. The application shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this [State,] state, a corporate name that satisfies the requirements of section 414D-276;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date of incorporation [and period of duration];
- (4) The mailing address of the corporation's principal office, the street address of its registered office in this [State,] state, and the name of its registered agent at its registered office in this [State,] state;
- (5) The names and usual business addresses of its current directors and officers; and
- (6) Whether the foreign corporation has members."

SECTION 7. Section 415A-18, Hawaii Revised Statutes, is amended to read as follows:

"**§415A-18 Administrative dissolution; expiration; reinstatement.** (a) The director may commence a proceeding to dissolve a professional corporation administratively if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

Before the director may declare a professional corporation dissolved, the director shall give notice of ~~[the ground or]~~ any grounds for dissolution by mailing the notice to the professional corporation at its last known address appearing in the records of the director.

(b) If the professional corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after the date of mailing of the director's written notice, the director shall administratively dissolve the corporation by signing a decree of dissolution that recites ~~[the ground]~~ any grounds for dissolution and its effective date. The decree shall be filed in the director's office. The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

(c) ~~[Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any professional corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section 414-473. If a trustee is not appointed by a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved professional corporation with full powers to settle its affairs.]~~ A professional corporation that is administratively dissolved may continue its corporate existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.

(d) In each case where the director has given a professional corporation notice of intention to dissolve the corporation on the grounds that its articles of incorporation have been procured through fraud, the corporation shall be entitled to petition for an administrative hearing under chapter 91 and shall give written notice to the director thereof, before the director may declare the corporation dissolved under subsection (a).

(e) ~~[Within two years after the administrative dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by an officer of the corporation setting forth such information as the director may require, and contain a certificate from the department of taxation indicating that all taxes owed by the corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation, the payment of all delinquent fees and penalties and the filing of all reports due and unfiled.]~~ A professional corporation that is administratively dissolved under this section may apply to the director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) Recite the name of the professional corporation and the effective date of its administrative dissolution;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation indicating that all taxes owed by the professional corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

Within the applicable reinstatement period, should the name of the professional corporation, or a name substantially identical thereto, be registered or reserved by another [~~corporation, partnership, limited liability company, or limited liability partnership,~~] entity or [~~should the~~] if that name or a name substantially identical [thereto be] is registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the [involuntarily] administratively dissolved professional corporation pursuant to the amendment provisions of this chapter.

(f) [~~A professional corporation whose articles of incorporation have expired shall cease to exist by operation of law.~~

(g) If a professional corporation was dissolved due to the expiration of its period of duration, the If a professional corporation's period of duration specified in its articles of incorporation has expired, the professional corporation may continue its corporate existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.

(g) The professional corporation, at any time within two years of [such dissolution,] expiration of its period of duration, may amend its articles of incorporation to extend its period of duration[;], and upon the amendment, the professional corporation may resume carrying on its business as if the expiration had never occurred; provided that, if the name of the professional corporation or a name substantially identical thereto is registered or reserved by another [corporation, partnership, limited liability company, or limited liability partnership,] entity, or if [the] that name or a name substantially identical [thereto] is registered as a trade name, trademark, or service mark, then the extension of [corporate existence] its period of duration shall be allowed only upon the registration of a new name by the professional corporation pursuant to the amendment provisions of this chapter."

SECTION 8. Section 425E-811, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The court may summarily order the director to reinstate the [dissolved] administratively canceled limited partnership or may take other action the court considers appropriate."

SECTION 9. Section 428-810, Hawaii Revised Statutes, is amended to read as follows:

**"§428-810 Procedure for and effect of administrative termination.** (a) If the director determines that [~~a ground exists] one or more grounds exist to [terminate] administratively terminate a limited liability company, the director may declare the company terminated. Before the director declares a limited liability company terminated, the director shall mail a notice of the grounds for termination to the company and may give public notice of the intention to terminate the limited liability company.~~

(b) If the limited liability company does not correct each ground for termination or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after mailing of the notice of intention to terminate the limited liability company, the director shall administratively terminate the company by signing a decree of termination that recites the ground or grounds for termination and its effective date. The decree shall be filed in the director's office.

(c) A limited liability company administratively terminated continues its existence temporarily but may carry on only business necessary to wind up and liquidate

its business and affairs under section 428-802 and to notify claimants under section 428-807. The company ceases existence upon the completion of these matters.

(d) The administrative termination of a limited liability company does not terminate the authority of its agent for service of process.

(e) Any manager, member, or creditor of an administratively terminated limited liability company may petition the circuit court to appoint a trustee to settle its affairs. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's possession as trustee, a sum equal to any penalties imposed pursuant to section 428-1302. Up until the time a trustee is appointed by the circuit court, or indefinitely if a trustee is not appointed by the circuit court, the last managers of the limited liability company if the company was manager-managed, or if not manager-managed the last members of the limited liability company, shall be and act as trustees for the creditors and members of the limited liability company with full powers to settle its affairs.

~~[(f) The director shall deliver a copy of the decree of termination for each administratively terminated limited liability company to the director of taxation and financial officer of each county.]~~

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect on July 1, 2008.

(Approved May 1, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 55

H.B. NO. 2559

A Bill for an Act Relating to the Uniform Unclaimed Property Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### “CHAPTER UNIFORM UNCLAIMED PROPERTY ACT

§ -1 **Short title.** This chapter may be cited as the Uniform Unclaimed Property Act.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Administrator” means the director of finance.

“Apparent owner” means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

“Business association” means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, safe deposit company, financial organiza-

tion, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

“Domicile” means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

“Financial organization” means a savings and loan association, financial services loan company, bank, banking organization, or credit union.

“Holder” means a person obligated to hold for the account of, or deliver or pay to, the owner of property that is subject to this chapter.

“Insurance company” means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers’ compensation insurance.

“Mineral” means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this State.

“Mineral proceeds” means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

- (1) For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;
- (2) For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and
- (3) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

“Money order” includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

“Owner” means a person who has a legal or equitable interest in property subject to this chapter or the person’s legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

“Person” means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Property” means tangible property described in section -4 or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder’s business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

- (1) Money, a check, draft, deposit, interest, or dividend;
- (2) A credit balance, customer’s overpayment, gift certificate not exempt under section -3.5, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;
- (3) Stock or other evidence of ownership of an interest in a business association or financial organization;
- (4) A bond, debenture, note, or other evidence of indebtedness;

- (5) Money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;
- (6) An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and
- (7) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

“Utility” has the same meaning as the term “public utility” under section 269-1.

**§ -3 Presumptions of abandonment.** (a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

- (1) Traveler's check, fifteen years after issuance;
- (2) Money order, seven years after issuance;
- (3) Stock or other equity interest in a business association or financial organization, including a security entitlement under article 8 of the Uniform Commercial Code – Investment Securities, five years after the earlier of:
  - (A) The date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner; or
  - (B) The date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;
- (4) Debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, five years after the date of the most recent interest payment unclaimed by the apparent owner;
- (5) A demand, savings, or time deposit, including a deposit that is automatically renewable, five years after the earlier of maturity or the date of the last indication by the owner of interest in the property; provided that a deposit that is automatically renewable is deemed matured for purposes of this section upon its initial date of maturity, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;
- (6) Money or credits owed to a customer as a result of a retail business transaction, five years after the obligation accrued;
- (7) Gift certificate not exempt under section -3.5, five years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned shall be deemed to be one hundred per cent of the certificate's face value;
- (8) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, five years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained

if living, the limiting age under the mortality table on which the reserve is based;

- (9) Property distributable by a business association or financial organization in a course of dissolution, one year after the property becomes distributable;
- (10) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;
- (11) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;
- (12) Wages or other compensation for personal services, one year after the compensation becomes payable;
- (13) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;
- (14) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property shall begin to avoid a tax penalty; and
- (15) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(b) At the time that an interest is presumed abandoned under subsection (a), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, shall also be presumed abandoned.

(c) Property is unclaimed if, for the applicable period set forth in subsection (a), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner shall not be an indication of interest in the property by the owner.

(d) An indication of an owner's interest in property includes:

- (1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;
- (2) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;
- (3) The making of a deposit to or withdrawal from a bank account; and
- (4) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy shall not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(e) Property shall be payable or distributable for purposes of this chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

**§ -3.5 Gift certificates and gift cards.** (a) This chapter shall not apply to a gift certificate or gift card; provided the gift certificate or gift card has no expiration date, no expiration period, and no type of post-sale charge or fee (including but not limited to service charges, dormancy fees, account maintenance fees, cash-out fees, replacement card fees, and activation or reactivation charges).

(b) This chapter shall not apply to a gift certificate or gift card that has an expiration date, expiration period, or any type of post-sale charge or fee, including but not limited to service charges, dormancy fees, account maintenance fees, cash-out fees, replacement card fees, and activation or reactivation charges if:

- (1) The gift certificate or gift card was issued before January 1, 2010; and
- (2) It is the policy and practice of the issuer of the gift certificate or gift card to:
  - (A) Honor the gift certificate or gift card after its expiration date or the end of its expiration period; and
  - (B) Eliminate all post sale charges and fees.

(c) As used in this section, "gift certificate" or "gift card":

- (1) Means a written promise or electronic payment device that:
  - (A) Is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers;
  - (B) Is issued in a specific amount (which may or may not be denominated on the gift certificate or gift card);
  - (C) May or may not be increased in value or reloaded;
  - (D) Is purchased, or loaded, or both, on a prepaid basis for the future purchase or delivery of any goods or services; and
  - (E) Is honored upon presentation.
- (2) Shall not include:
  - (A) An electronic payment device linked to a deposit account, or prepaid telephone calling cards;
  - (B) Flexible spending arrangements as defined in section 106(c)(2) of the Internal Revenue Code (26 U.S.C. 106(c)(2)); flexible spending accounts subject to section 125 of the Internal Revenue Code (26 U.S.C. 125), Archer MSAs as defined in section 220(d) of the Internal Revenue Code (26 U.S.C. 129); dependent care reimbursement accounts subject to section 129 of the Internal Revenue Code (26 U.S.C. 129); health savings accounts subject to section 223(d) of the Internal Revenue Code (26 U.S.C. 223(d)), as amended by section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173); or similar accounts for which, under the Internal Revenue Code and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis. As used in this subparagraph, "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended; and
  - (C) Payroll cards or other electronic payment devices that are linked to a deposit account and that are given in exchange for goods or services rendered.

**§ -4 Contents of safe deposit box or other safekeeping depository.** Tangible property held in a safe deposit box or other safekeeping depository in this State in the ordinary course of the holder's business and proceeds resulting from the sale



of the property permitted by other law, shall be presumed abandoned if the property remains unclaimed by the owner for more than five years after expiration of the lease or rental period on the box or other depository.

**§ -5 Rules of taking custody.** Except as otherwise provided in this chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, shall be subject to the custody of this State if:

- (1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;
- (2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this State;
- (3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:
  - (A) The last known address of the person entitled to the property is in this State; or
  - (B) The holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;
- (4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;
- (5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;
- (6) The transaction out of which the property arose occurred in this State, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or
- (7) The property is a traveler's check or money order purchased in this State, or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property, or do not show the state in which the instrument was purchased.

**§ -6 Dormancy charge.** A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction shall be limited to an amount that is not unconscionable.

**§ -7 Burden of proof as to property evidenced by record of check or draft.** A record of the issuance of a check, draft, or similar instrument shall be prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment shall be satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment,

satisfaction, discharge, and want of consideration are affirmative defenses that shall be established by the holder.

**§ -8 Report of abandoned property.** (a) A holder of property presumed abandoned shall make a report to the administrator concerning the property.

(b) The report shall be verified and shall contain:

- (1) A description of the property;
- (2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of \$50 or more;
- (3) An aggregated amount of items valued under \$50 each;
- (4) In the case of an amount of \$50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;
- (5) In the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator, and any amounts owing to the holder;
- (6) The date, if any, on which the property became payable, demandable, or returnable, the date of the last transaction with the apparent owner with respect to the property, and whether the property is an interest bearing account; and
- (7) Other information that the administrator by rules adopted under chapter 91 prescribes as necessary for the administration of this chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report shall be filed before November 1 of each year and cover the twelve months next preceding July 1 of that year; provided that a report with respect to a life insurance company shall be filed before November 1 of each year for the calendar year next preceding.

(e) The holder of property presumed abandoned shall send written notice to the apparent owner, not more than six months before filing the report, stating that the holder is in possession of property subject to this chapter, if:

- (1) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;
- (2) The claim of the apparent owner is not barred by a statute of limitations; and
- (3) The value of the property is \$50 or more.

(f) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which shall terminate the accrual of additional interest on the amount paid.

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (e).

**§ -9 Payment or delivery of abandoned property.** (a) Except for property held in a safe deposit box or other safekeeping depository, within six months after the final date for filing the report required by section -8, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is

an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance shall be extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository shall not be delivered to the administrator until an additional one hundred twenty days after the time for payment or delivery to the administrator of property presumed abandoned as required by this subsection.

(b) If the property reported to the administrator is a security or security entitlement under article 8 of the Uniform Commercial Code – Investment Securities, the administrator shall be an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with article 8 of the Uniform Commercial Code – Investment Securities.

(c) If the holder of property reported to the administrator is the issuer of a certificated security, the administrator shall have the right to obtain a replacement certificate pursuant to section 490:8-405; provided that an indemnity bond shall not be required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section shall not be liable to the apparent owner and shall be indemnified against claims of any person in accordance with section -11.

**§ -10 Notice and publication of lists of abandoned property.** (a) The administrator shall publish a notice not later than March 1 of the year next following the report required by section -8 at least once statewide. The notice shall be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form shall contain:

- (1) The name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;
- (2) The last known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;
- (3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and
- (4) A statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(b) The notice shall be given by using one or more of the following methods:

- (1) Posting on the State of Hawaii, department of budget and finance internet website;
- (2) Publication in a daily or weekly publication of statewide circulation; or
- (3) Any other method the administrator deems effective for publicizing the notice.

(c) The administrator shall not be required to advertise the name and address or location of an owner of property having a total value less than \$100, or information concerning a traveler’s check, money order, or similar instrument.

**§ -11 Custody by State; recovery by holder; defense of holder.** (a) In this section, payment or delivery is made in “good faith” if:

- (1) Payment or delivery was made in a reasonable attempt to comply with this chapter;

- (2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and
- (3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the administrator, the state shall assume custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the administrator in good faith shall be relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the administrator pursuant to this chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder shall be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder shall be reimbursed for payment made even if the payment was made to a person whose claim was barred under section -19(a).

(d) A holder who has delivered property other than money to the administrator pursuant to this chapter may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the administrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.

(g) Property removed from a safe deposit box or other safekeeping depository shall be received by the administrator subject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

**§ -12 Crediting of dividends, interest, and increments to owner's account.** If property other than money is delivered to the administrator under this chapter, the owner shall be entitled to receive from the administrator any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property was an interest-bearing demand, savings, or time deposit, including a deposit that is automatically renewable, the administrator shall pay simple interest at the legal rate of interest established in section 478-2, or any lesser rate the property earned while in the possession of the administrator. Interest shall begin to accrue when the property is delivered to the administrator and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. Interest on interest-bearing property shall not be payable for any property delivered to the administrator before the effective date of this chapter.

**§ -13 Public sale of abandoned property.** (a) Except as otherwise provided in this section, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the administrator affords the most favorable market for the

property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section shall be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(b) Securities listed on an established stock exchange shall be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over-the-counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of three years after their delivery to the administrator, a person making a valid claim under this chapter before the end of the three-year period shall be entitled to the proceeds of the sale of the securities or the market value of the securities at the time the valid claim is made, whichever is greater, plus dividends, interest, and other increments thereon up to the time the valid claim is made, less any deduction for expenses of sale. A person making a valid claim under this chapter after the expiration of the three-year period shall be entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale, and shall not be entitled to receive any appreciation in the value of the property occurring after delivery to the administrator, except in a case of intentional misconduct or malfeasance by the administrator.

(c) A purchaser of property at a sale conducted by the administrator pursuant to this chapter shall take the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

**§ -14 Claim of another state to recover property.** (a) After property has been paid or delivered to the administrator under this chapter, another state may recover the property if:

- (1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;
- (2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted the property has escheated or become subject to a claim of abandonment by that state;
- (3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;
- (4) The property was subjected to custody by this State under section -5(6) and under the laws of the state of domicile of the holder the property has escheated or become subject to a claim of abandonment by that state;  
or
- (5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under section -5(7), and under the laws of the other state the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property shall be presented in a form prescribed by the administrator, who shall decide the claim within ninety days after it is presented. The administrator shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a).

(c) The administrator shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.

**§ -15 Filing claim with administrator; handling of claims by administrator.** (a) A person, excluding another state, claiming property paid or delivered to the administrator may file a claim on a form prescribed by the administrator and verified by the claimant.

(b) Within one hundred twenty days after a claim is filed, the administrator shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under section -16.

(c) Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property shall be delivered or paid by the administrator to the claimant, together with any dividend, interest, or other increment to which the claimant is entitled under sections -12 and -13.

(d) A holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator by the owner would be subject to an increment under sections -12 and -13, may recover from the administrator the amount of the increment.

**§ -16 Action to establish claim.** A person, excluding another state, aggrieved by a decision of the administrator or whose claim has not been acted upon within one hundred twenty days after its filing may maintain an original action to establish the claim in the circuit court, naming the administrator as a defendant. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney's fees.

**§ -17 Election to take payment or delivery.** (a) The administrator may decline to receive property reported under this chapter that the administrator considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the administrator and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Property so delivered shall be held by the administrator and shall not be presumed abandoned until it otherwise would be presumed abandoned under this chapter.

**§ -18 Destruction or disposition of property having no substantial commercial value; immunity from liability.** If the administrator determines after investigation that property delivered under this chapter has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding shall not be maintained against the State or any officer or against the holder for or on account of an act of the administrator under this section, except for intentional misconduct or malfeasance.

**§ -19 Periods of limitation.** (a) The expiration, before or after the effective date of this chapter, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, shall not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by this chapter.

(b) An action or proceeding may not be maintained by the administrator to enforce this chapter in regard to the reporting, delivery, or payment of property more

than ten years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation shall be tolled. The period of limitation shall also be tolled by the filing of a report that is fraudulent.

**§ -20 Requests for reports and examination of records.** (a) The administrator may require a person who has not filed a report, or a person who the administrator believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the administrator. The report shall state whether the person is holding property reportable under this chapter, describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(b) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this chapter. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this chapter. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(c) The administrator at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial association that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (b) to both the association or organization and the agent at least ninety days before the examination.

(d) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an examination are confidential and are not public records; provided that the documents and papers may be:

- (1) Used by the administrator in the course of an action to collect unclaimed property or otherwise enforce this chapter;
- (2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;
- (3) Produced pursuant to subpoena or court order; or
- (4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination of the records of a person results in the disclosure of property reportable under this chapter, the administrator may assess the cost of the examination against the holder at the rate of \$200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) may be assessed only against the business association or financial organization.

(f) If, after the effective date of this chapter, a holder does not maintain the records required by section -21 and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

**§ -21 Retention of records.** (a) Except as otherwise provided in subsection (b), a holder required to file a report under section -8 shall maintain the records containing the information required to be included in the report for ten years

after the holder files the report, unless a shorter period is provided by rule of the administrator.

(b) A business association or financial organization that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

**§ -22 Enforcement.** The administrator may maintain an action in this or another state to enforce this chapter. The court may award reasonable attorney's fees to the prevailing party.

**§ -23 Interstate agreements and cooperation; joint and reciprocal actions with other states.** (a) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in section -20. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The administrator may join with another state to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(c) At the request of another state, the attorney general of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in maintaining the action.

(d) The administrator may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the administrator. With the approval of the attorney general of this State, the administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This State shall pay all expenses, including attorney's fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney's fees may be paid from money received under this chapter. The administrator may agree to pay expenses and attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney's fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this chapter.

**§ -24 Interest and penalties.** (a) A holder who fails to report, pay, or deliver property within the time prescribed by this chapter shall pay to the administrator interest at the annual rate of two percentage points above the annual rate of discount in effect on the date the property should have been paid or delivered for the most recent issue of fifty-two-week United States Treasury bills on the property or value thereof from the date the property should have been reported, paid, or delivered.

(b) Except as otherwise provided in subsection (c), a holder who fails to report, pay, or deliver property within the time prescribed by this chapter, or fails to perform other duties imposed by this chapter, shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of \$200 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of \$5,000.

(c) A holder who wilfully fails to report, pay, or deliver property within the time prescribed by this chapter, or wilfully fails to perform other duties imposed by this chapter, shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of \$1,000 for each day the report, payment, or delivery is



withheld, or the duty is not performed, up to a maximum of \$25,000, plus twenty-five per cent of the value of any property that should have been but was not reported.

(d) A holder who makes a fraudulent report shall pay to the administrator, in addition to interest as provided in subsection (a), a civil penalty of \$1,000 for each day from the date a report under this chapter was due, up to a maximum of \$25,000, plus twenty-five per cent of the value of any property that should have been but was not reported.

(e) The administrator for good cause may waive, in whole or in part, interest under subsection (a) and penalties under subsections (b) and (c), and shall waive penalties if the holder acted in good faith and without negligence.

**§ -25 Agreement to locate property.** (a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned shall be void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is twenty-four months after the date the property is paid or delivered to the administrator. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property shall be enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the apparent owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision shall be void and unenforceable.

(d) An agreement covered by this section which provides for compensation that is unconscionable shall be unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation.

**§ -26 Deposit of funds.** (a) There is established in the state treasury the unclaimed property trust fund, which shall be administered by the administrator. All moneys collected by the unclaimed property program from holders of property presumed abandoned and all proceeds from the sale of unclaimed property, less costs in connection with the sale of the abandoned property, shall be deposited into the unclaimed property trust fund.

(b) Moneys in the unclaimed property trust fund shall be used for the payment of the following:

- (1) Claims for the return of abandoned property to their rightful owners;
- (2) Payment to other states' unclaimed property programs for owners whose last known address was in that other state;
- (3) Any costs incurred in connection with the sale of abandoned property;
- (4) Costs of mailing and publication in connection with any abandoned property;
- (5) Reasonable service charges;
- (6) Costs incurred in examining the records of holders of property and in collecting such property from those holders; and

(7) Any other charges, costs, or expenses incurred in the operation, administration, and enforcement of this chapter.

(c) Except as provided in section -12, moneys in the unclaimed property trust fund shall be invested by the administrator, and all investment earnings shall be deposited to the credit of the general fund.

(d) All unencumbered and unexpended moneys in excess of \$1,300,000 remaining on balance in the unclaimed property trust fund on June 30 of each year shall lapse to the credit of the state general fund.

§ -27 **Foreign transactions.** This chapter does not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

§ -28 **Transitional provisions.** (a) An initial report filed under this chapter for property that was not required to be reported before the effective date of this chapter but which is subject to this chapter shall include all items of property that would have been presumed abandoned during the ten-year period next preceding the effective date of this chapter as if this chapter had been in effect during that period.

(b) This chapter does not relieve a holder of a duty that arose before the effective date of this chapter to report, pay, or deliver property. Except as otherwise provided in section -19(b), a holder who did not comply with the law in effect before the effective date of this chapter shall be subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

§ -29 **Rules.** The administrator may adopt, pursuant to chapter 91, rules necessary to carry out this chapter.

§ -30 **Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.”

SECTION 2. Section 523A-63, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§523A-63]]~~ **Disposition of property received.** Property received under this part shall be deposited or sold by the director as though received under ~~[part I of this chapter.]~~ chapter. Property received under this part shall not be subject to claim within two years following the date upon which it is paid to or received by the State. Thereafter, persons claiming an interest in the unclaimed property delivered to the State pursuant to this part shall make their claims in the manner provided in ~~[part I of this chapter.]~~ chapter.”

SECTION 3. Section 523A-65, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other provision of law, the right of the State to maintain an action and to recover presumptively abandoned property and the obligation of the federal government, or any federal agency, entity, officer, or appointee thereof, to comply with the requirements contained in ~~[sections 523A-1 to 523A-64]~~ chapter and sections 523A-51 to 523A-64 shall not be affected by any state failure to adhere to sections 523A-54 to 523A-64.”

SECTION 4. Chapter 523A, part I, Hawaii Revised Statutes, is repealed.

SECTION 5. On the effective date of this Act, the director of finance shall transfer all of the funds in the unclaimed property trust fund established by section 523A-23.5, Hawaii Revised Statutes, to the unclaimed property trust fund created by section -26 in section 1 of this Act.

## ACT 56

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2009.

(Approved May 1, 2008.)

## ACT 56

S.B. NO. 2900

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 1989, the legislative reference bureau published a study entitled *Roads in Limbo: An Analysis of the State-County Jurisdictional Dispute*. In that study, it was found that “[t]here is a considerable and uncatalogued number of public highways in the state whose ownership, as between the State and the counties, is in dispute, as the State holds paper title to these roads but contends that ownership of these roads has passed to the counties by the operation of law.” The study further noted that among the causes for this jurisdictional dispute are that neither the State nor the counties want to be responsible for the cost of maintaining the roads and the potential liability that would arise from ownership of the roads.

A result of this ownership dispute is that both the State and the counties are reluctant to enforce laws and rules regarding the use of roads in limbo by private parties. Consequently, individuals have improperly blocked access to these roads, believing that neither the State nor the counties will enforce laws and rules that would otherwise allow the public to use them to access coastal and inland recreational areas.

The purpose of this Act is to:

- (1) Establish that any county has the power to enforce laws and rules applicable to the use of public streets, roads, or highways whose ownership is in dispute between the State and county;
- (2) Establish that any county may repair and provide maintenance of public streets, roads, or highways whose ownership is in dispute between the State and county without claiming their ownership; and
- (3) Ensure that the general public retains the right to use these public streets, roads, or highways to access coastal and inland recreational areas, including beaches, shores, parks, and trails.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**“§46- Traffic regulation; repair and maintenance; public right to use public streets, roads, or highways whose ownership is in dispute.** (a) Any provision of law to the contrary notwithstanding, any county and its authorized personnel may impose and enforce traffic laws and shall enforce chapters 286 and 291C on public streets, roads, or highways whose ownership is in dispute between the State and the county.

(b) Any provision of the law to the contrary notwithstanding, any county and its authorized personnel may repair or maintain, in whole or in part, public streets, roads, or highways whose ownership is in dispute between the State and the county.

(c) No presumption that a county owns a particular street, road, or highway shall arise as a result of the county’s performance of the activities allowed by subsection (a) or (b).

(d) The general public shall have the unrestricted right to use public streets, roads, or highways whose ownership is in dispute between the State and the county to access the shoreline and other public recreational areas; provided that this subsection shall not apply to any private street, road, or highway whose ownership is in dispute.

(e) As used in this section:

“Public recreational area” means coastal and inland recreational areas, including beaches, shores, public parks, public lands, public trails, and bodies of water opened to the public for recreational use.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 1, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 57**

S.B. NO. 2816

A Bill for an Act Relating to Intra-County Ferry Service.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the residents of West Maui are served by only one highway and one small airport. Residents on the island of Lanai have only one feasible means of water transport to Maui—by intra-county ferry from Lanai to Lahaina. However, the Lahaina small boat harbor is already overused and is shared by commercial fishing activities and cruise ships that add to already congested surface traffic.

The legislature finds that an alternate ferry route from Lanai to Maalaea harbor will:

- (1) Provide more convenient travel for the residents of Lanai and West Maui;
- (2) Ease the congestion in and around Lahaina and its boat harbor; and
- (3) Make emergency ferry operations out of Lahaina a feasible reality as a component of an emergency transportation system should the only highway in West Maui be closed.

However, any ferry route to and from Maalaea harbor and Lahaina requires priority assigning of mooring space. In addition, the added fuel costs of this route would require an exemption from the fuel tax for fuel purchases for the ferry service.

The purpose of this Act is to provide priority assignment of mooring space for a new ferry route from Maalaea harbor to Lahaina and to provide an exemption from the fuel tax for fuel purchases for the ferry service.

SECTION 2. Any other law to the contrary notwithstanding, the department of land and natural resources shall assign priority mooring space to any intra-county ferry service regulated by the public utilities commission that serves a county:

- (1) With a population of less than five hundred thousand residents; and
- (2) That includes at least three islands inhabited by permanent residents.

SECTION 3. Section 243-7, Hawaii Revised Statutes, is amended to read as follows:

**“§243-7 Tax not applicable, when. (a)** This chapter requiring the payment of license fees shall not be held or construed to apply to fuel imported into the [State] state in interstate or foreign commerce while and so long as such fuel is beyond the taxing power of the State, nor to any such fuel exported or sold to the government of the United States or any department thereof for official use of the government, nor to any fuel exported or sold to another licensed distributor; but every distributor shall be required to report such imports, exports, and sales as provided by this chapter and in such detail as the department of taxation shall require.

**(b) This chapter shall not apply to the sale of liquid fuel sold or used in the state for ultimate use by an intra-county ferry service that serves a county with a population of less than five hundred thousand residents and that includes at least three islands inhabited by permanent residents.”**

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon approval and shall apply to taxable years beginning after December 31, 2007.

(Became law on May 1, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

**ACT 58**

S.B. NO. 2153

A Bill for an Act Relating to Income Tax Credit.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that article VII, section 6, of the Hawaii Constitution requires the legislature to provide a tax refund or tax credit when certain factors are met. The legislature finds that these factors have been met for the second year in a row and that the legislature is constitutionally required to provide a tax credit or tax refund to taxpayers.

The purpose of this Act is to provide for an income tax credit of \$1 multiplied by the number of the taxpayer’s qualified exemptions to every resident individual taxpayer of the state to satisfy constitutionally mandated requirements.

SECTION 2. (a) There shall be allowed each resident individual taxpayer who files an individual income tax return for the taxable year 2008 and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, a general income tax credit of \$1, which shall be deducted from income tax liability computed under chapter 235, Hawaii Revised Statutes; provided that a resident individual who has no income or no income taxable under chapter 235, Hawaii Revised Statutes, and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Hawaii state individual income tax purposes may claim this credit.

Each resident individual taxpayer may claim the general income tax credit multiplied by the number of qualified exemptions to which the taxpayer is entitled.

Each person for whom the general income tax credit is claimed shall have been a resident of the state, as defined in section 235-1, Hawaii Revised Statutes, for at least nine months regardless of whether the qualified resident was physically in the

state for nine months. Multiple exemptions shall not be granted for the general income tax credit because of age or deficiencies in vision, hearing, or other disability.

The general income tax credit shall not be available to:

- (1) Any person who has been convicted of a felony and who has been committed to prison and has been physically confined for the full taxable year;
- (2) Any person who would otherwise be eligible to be claimed as a dependent but who has been committed to a youth correctional facility and has resided at the facility for the full taxable year; or
- (3) Any misdemeanor who has been committed to jail and has been physically confined for the full taxable year.

The tax credit claimed by a resident taxpayer pursuant to this Act shall be deductible from the resident taxpayer's individual income tax liability for the taxable year 2008. If the tax credit claimed by a resident taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the excess of credits over payments due shall be refunded to the resident taxpayer; provided that a tax credit properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual.

All claims for tax credits under this Act, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with this filing requirement shall constitute a waiver of the right to claim the credit.

(b) This section implements the provisions of article VII, section 6, of the Hawaii Constitution, enacted by the 1978 constitutional convention, which reads as follows:

**“DISPOSITION OF EXCESS REVENUES**

**Section 6.** Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, as provided by law.”

SECTION 3. This Act shall take effect upon its approval.

(Became law on May 1, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**ACT 59**

H.B. NO. 7

A Bill for an Act Relating to the I-Saverx Prescription Drug Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that:

- (1) I-SaveRx is a prescription drug reimportation program developed by the State of Illinois that allows Illinois consumers to refill prescriptions from pharmacies in Canada and the United Kingdom for the most common brand-name prescription drugs used to treat chronic illness at affordable prices;
- (2) Illinois has expended significant time and resources conducting required inspections of the participating foreign pharmacies to ensure safety and quality;
- (3) Effective July 1, 2006, Illinois selected a new pharmacy benefits manager, Pegasus Health Services Limited, a vendor with extensive experi-

ence in the international prescription drug services industry and with existing relationships with licensed pharmacies in Canada, the United Kingdom, Australia, and New Zealand;

- (4) Since Illinois implemented the I-SaveRx prescription drug program, Wisconsin, Missouri, Kansas, and Vermont have joined the program as participating states;
- (5) Program participants have access to the I-SaveRx program through an internet website and a toll-free twenty-four-hour telephone number;
- (6) Program participants are expected to save twenty-five to fifty per cent on the cost of their medications;
- (7) Like Illinois residents, Hawaii residents require timely access to safe, high-quality, and efficacious prescription drugs at affordable prices; and
- (8) Although reimportation of drugs is not a long-term, comprehensive solution to the problem of affordable drugs, Hawaii's participation in the I-SaveRx prescription drug program will provide residents with an interim option for obtaining safe and affordable prescription drugs.

The purpose of this Act is provide increased access to safe prescription drugs at affordable prices by directing the governor to enter into the appropriate written agreement that authorizes Hawaii residents to participate in the I-SaveRx prescription drug program.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . I-SAVERX PRESCRIPTION DRUG PROGRAM**

**§346-A Definitions.** As used in this part, unless the context otherwise requires:

“Network pharmacies” shall have the same meaning as the term is defined in the pharmacy benefits management agreement.

“Participating states” means Illinois and any other state that enters or has entered into an agreement with the State of Illinois to participate in the I-SaveRx prescription drug program.

**§346-B I-SaveRx prescription drug program; participation.** The governor shall enter into a written agreement with the State of Illinois and any other state necessary to provide access for program participants, including Hawaii residents, to safe and affordable prescription drugs from Europe and Canada through the Illinois I-SaveRx prescription drug program, no later than January 1, 2009.

The program shall be operational and available to Hawaii residents by July 1, 2009.

**§346-C Agreement to participate.** The written agreement authorizing the State of Hawaii to participate in the I-SaveRx prescription drug program shall:

- (1) State that all Hawaii residents shall be provided access to the I-SaveRx prescription drug program through the Internet and a twenty-four-hour toll-free telephone number and shall be considered program participants;
- (2) Contain specific standards for quality control and safety that are comparable to the standards of the United States;
- (3) Provide that Hawaii, with Illinois, may participate in on-site inspections of participating network pharmacies; Hawaii may independently inspect any pharmacy that is subsequently added to the network of pharmacies; provided that Hawaii shall submit to Illinois written notice of intent to conduct an independent inspection no fewer than fourteen days prior to the inspection, unless the inspection is an investigation of a complaint;

- (4) Require that the pharmacy benefits manager shall immediately suspend a participating pharmacy upon receiving a written notice from Hawaii of the pharmacy's violation of the standards of practice;
- (5) Require written notice to the governor when other states are added to the I-SaveRx prescription drug program as participating states; and
- (6) Provide that Hawaii may terminate the written agreement to participate in the I-SaveRx prescription drug program with or without cause, after giving written notice to the participating states.

**§346-D Program access; benefits.** (a) In the pharmacy benefits management agreement, Illinois shall state that Hawaii residents shall have access to the services of the I-SaveRx prescription drug program and that Hawaii residents shall be "program participants" as defined in the pharmacy benefits management agreement.

(b) The prescription drugs most commonly used to treat chronic illnesses shall be available to refill prescriptions for Hawaii residents through a network of inspected and approved pharmacies in countries other than the United States. Prescription drugs not approved by Illinois shall not be available from network pharmacies for program participants.

(c) Program participants in Hawaii shall refill prescriptions in an amount equal to a three-month supply from the program.

**§346-E State internet website; I-SaveRx internet website.** (a) The operation and administration of the internet website accessed via the I-SaveRx site shall be the responsibility of the pharmacy benefits manager.

(b) The governor shall establish, operate, and administer a separate internet website to provide Hawaii residents with information relating to the I-SaveRx prescription drug program. The information on the I-SaveRx internet website shall also expressly state to program participants that:

- (1) The affordable prescription drugs offered through the I-SaveRx prescription program are from Europe and Canada through the Illinois I-SaveRx prescription program; and
- (2) The State shall not be liable for injury or damage caused to a person from prescription drugs obtained through the I-SaveRx prescription program.

The State's internet website shall provide a link to the program's internet website.

(c) Hawaii residents shall be deemed program participants and shall have access to the services of the I-SaveRx prescription drug program in the same manner as other program participants in other participating states.

**§346-F Drug supply.** Hawaii shall cooperate with participating states to ensure an adequate supply of prescription drugs from the program's participating pharmacies. If demand exceeds the prescription drugs available, an agreement may provide that Illinois residents have priority over other program participants in other participating states.

**§346-G Joint work group.** (a) To ensure adequate input from Hawaii regarding the safe and effective administration of the I-SaveRx prescription drug program, Hawaii shall be a member of the joint work group, composed of two representatives from each participating state.

(b) The governor and the director of human services, or their designees, shall be the work group representatives from Hawaii.

(c) The joint work group shall annually review the approved drug list and the standards of practice to consider whether modifications to either are necessary. Modifications to the approved drug list or to the standards of practice shall require the consent of the joint work group.

- (d) The joint work group shall meet or confer on an as-needed basis.



**§346-H Pharmacy benefits management agreement; compliance.** (a) Illinois shall be the primary administrator of the pharmacy benefits management agreement.

(b) A set of standards of practice adopted by participating states shall be incorporated in the pharmacy benefits management agreement.

(c) The pharmacy benefits manager and the network of pharmacies shall comply with the terms of the pharmacy benefits management agreement.

**§346-I Inspection.** (a) Under the terms of the pharmacy benefits management agreement, participating pharmacies shall be subject to on-site inspection by Illinois and Hawaii, with or without advance notice.

(b) To the extent that additional pharmacies are added to the list of network pharmacies, Hawaii may independently inspect those pharmacies.

(c) Hawaii shall provide advance notice in writing to Illinois of any intent to conduct an independent inspection of a participating pharmacy no fewer than fourteen days prior to the inspection, unless the inspection is an investigation of a complaint.

**§346-J Monitoring.** (a) Any report issued by the pharmacy benefits manager or local regulatory authorities regarding the network pharmacies' compliance or noncompliance with the standards of practice shall be provided to Hawaii.

(b) The joint work group shall determine the data and information to be included in reports issued by the pharmacy benefits manager and the periodic basis on which the reports shall be issued.

**§346-K Violation.** (a) Hawaii shall provide written notice of a violation of the standards of practice to Illinois and the pharmacy benefits manager.

(b) Upon receiving the written notice from Hawaii, Illinois shall instruct the pharmacy benefits manager to immediately suspend the participating pharmacy, pending further review by the pharmacy benefits manager and the participating states.

(c) Upon completion of the review, the participating pharmacy shall be reinstated or excluded from the program, as appropriate.

**§346-L Cancellation.** Hawaii or Illinois may withdraw from this agreement and terminate this cooperative relationship at any time, with or without cause, upon written notice to the other participating states.

Hawaii may withdraw from the cooperative relationship by the amendment or repeal of this Act, or by the governor, with the approval of the senate and house committees with jurisdiction over this matter.

**§346-M State immunity.** The State of Hawaii shall not be liable for any injury or damage caused to a person from prescription drugs obtained through the I-SaveRx prescription drug program.

**§346-N Implementation of the I-SaveRx prescription drug program; consumer outreach and educational resources.** (a) Within twenty-one days of the effective date of this part, the governor shall convene a working group that shall promote the participation of Hawaii residents in the I-Saver prescription drug program by:

- (1) Developing consumer outreach and educational material to inform Hawaii residents about participation in the I-SaveRx prescription drug program; and
  - (2) Developing materials, forms, procedures, or other resources to implement and administer the I-SaveRx prescription drug program.
- (b) Members of the working group shall include:
- (1) The governor;
  - (2) The directors of human services, health, and human resources development, respectively;
  - (3) A representative from the executive office on aging;

- (4) Two public members who represent interested consumers and health care providers, respectively; and
- (5) Other representatives from interested parties or stakeholders, as deemed appropriate by the governor.

(c) In developing consumer outreach and educational materials and resources relating to program implementation, the working group shall be authorized to use the name, logo, internet website, and marketing materials for the I-SaveRx prescription drug program that have been developed by Illinois; provided that the Hawaii state seal may be added to existing I-SaveRx program materials where appropriate.

(d) The working group shall develop I-SaveRx prescription drug program resources that include enrollment forms, informational brochures or pamphlets, an internet website, promotional materials, and materials related to program implementation.”

SECTION 3. The department of human services shall submit a written report to the legislature that includes but is not limited to the following:

- (1) The status of the I-SaveRx prescription program in the in the' State, including the number of consumers participating in the program, consumer demographics, and consumer satisfaction with the program;
- (2) Any problems implementing the I-SaveRx prescription program, including any lawsuits, consumer complaints, and other factors that contributed to impeding the access to or enrollment in the program;
- (3) Any consumer outreach and educational program regarding the I-SaveRx prescription program implemented by the working group pursuant to section 346-N, Hawaii Revised Statutes, and the effectiveness of these outreach and educational programs; and
- (4) Any recommendations regarding the feasibility of the I-SaveRx prescription program, including any proposed legislation.

The written report shall be submitted to the legislature no later than twenty days prior to the 2011 Regular Session.

SECTION 4. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. This Act shall take effect upon its approval and shall be repealed on June 30, 2012.

(Vetoed by Governor and veto overridden by Legislature on May 1, 2008.)

#### Note

1. So in original.

## ACT 60

S.B. NO. 868

A Bill for an Act Relating to Boards and Commissions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that paragraph 26-35(a)(1), Hawaii Revised Statutes, allows a department director to represent the boards and commissions established or placed in the department when communicating with the legislature. For many boards and commissions, the executive director, board chair, or commission chair submits testimony or communications to the legislature.

There have been times when a board or commission may have views or opinions that differ from the department director or governor. At these times, the director

may not be the appropriate representative for the board or commission, particularly if paragraph 26-35(a)(1), Hawaii Revised Statutes, is being invoked.

The legislature further finds that boards and commissions often provide valuable information in policy discussions. The purpose of this Act is to maintain open communications with boards and commissions when a director is considering invoking paragraph 26-35(a)(1), Hawaii Revised Statutes.

SECTION 2. Section 26-35, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever any board or commission is established or placed within or transferred to a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department, the following provisions shall apply except as otherwise specifically provided by this chapter:

- (1) The head of the department shall represent the board or commission in communications with the governor and with the legislature[-]; unless the legislature or a legislative committee requests to communicate directly with the board or commission;
- (2) The financial requirements from state funds of the board or commission shall be submitted through the head of the department and included in the budget for the department[-];
- (3) All rules [~~and regulations~~] adopted by the board or commission shall be subject to the approval of the governor[-];
- (4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board or commission shall be determined by the board or commission subject to the approval of the head of the department and to applicable personnel laws[-];
- (5) All purchases of supplies, equipment, or furniture by the board or commission shall be subject to the approval of the head of the department[-];
- (6) The head of the department shall have the power to allocate the space or spaces available to the department and which are to be occupied by the board or commission[-];
- (7) Any quasi-judicial functions of the board or commission shall not be subject to the approval, review, or control of the head of the department[-]; and
- (8) Except as set forth hereinabove, the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

(Vetoed by Governor and veto overridden by Legislature on May 1, 2008.)

## ACT 61

S.B. NO. 2779

A Bill for an Act Relating to Labor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 104-32, Hawaii Revised Statutes, is amended to read as follows:

**“§104-32 Suspension during emergency.** During a national emergency declared by the President or the Congress of the United States, or a state of emergency declared by the governor, subject to the provisions of section 127-10 or 128-7, the governor, by executive order in writing, may suspend this chapter[-]; provided that the governor may not suspend this chapter except in the event such an emergency occurs and is so proclaimed.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on May 1, 2008.)

## ACT 62

S.B. NO. 2898

A Bill for an Act Relating to the Agreement Among the States to Elect the President by National Popular Vote.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
AGREEMENT AMONG THE STATES TO ELECT THE  
PRESIDENT BY NATIONAL POPULAR VOTE  
ARTICLE I  
MEMBERSHIP**

Any state of the United States and the District of Columbia may become a member of this agreement by enacting this agreement.

**ARTICLE II  
RIGHT OF THE PEOPLE IN MEMBER STATES TO  
VOTE FOR PRESIDENT AND VICE PRESIDENT**

Each member state shall conduct a statewide popular election for President and Vice President of the United States.

**ARTICLE III  
MANNER OF APPOINTING PRESIDENTIAL  
ELECTORS IN MEMBER STATES**

Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each state of the United States and in the District of Columbia in which votes have been cast in a statewide popular election

and shall add such votes together to produce a “national popular vote total” for each presidential slate.

The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the “national popular vote winner.” The presidential elector certifying official of each member state shall certify the appointment in that official’s own state of the elector slate nominated in that state in association with the national popular vote winner.

At least six days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate and shall communicate an official statement of such determination within twenty-four hours to the chief election official of each other member state.

The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state’s final determination conclusive as to the counting of electoral votes by Congress.

In event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official’s own state.

If, for any reason, the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state’s number of electoral votes, the presidential candidate on the presidential slate that has been designated as the national popular vote winner shall have the power to nominate the presidential electors for that state and that state’s presidential elector certifying official shall certify the appointment of such nominees. The chief election official of each member state shall immediately release to the public all vote counts or statements of votes as they are determined or obtained.

This article shall govern the appointment of presidential electors in each member state in any year in which this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.

#### **ARTICLE IV OTHER PROVISIONS**

This agreement shall take effect when states cumulatively possessing a majority of the electoral votes have enacted this agreement in substantially the same form and the enactments by such states have taken effect in each state.

Any member state may withdraw from this agreement, except that a withdrawal occurring six months or less before the end of a President’s term shall not become effective until a President or Vice President shall have been qualified to serve the next term.

The chief executive of each member state shall promptly notify the chief executive of all other states of when this agreement has been enacted and has taken effect in that official’s state, when the state has withdrawn from this agreement, and when this agreement takes effect generally.

This agreement shall terminate if the electoral college is abolished.

If any provision of this agreement is held invalid, the remaining provisions shall not be affected.

#### **ARTICLE V DEFINITIONS**

For purposes of this agreement:

“Chief election official” shall mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate;

“Chief executive” shall mean the governor of a state of the United States or the mayor of the District of Columbia;

“Elector slate” shall mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate;

“Presidential elector” shall mean an elector for President and Vice President of the United States;

“Presidential elector certifying official” shall mean the state official or body that is authorized to certify the appointment of the state’s presidential electors;

“Presidential slate” shall mean a slate of two persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state;

“State” shall mean a State of the United States and the District of Columbia; and

“Statewide popular election” shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.”

SECTION 2. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on May 1, 2008.)

## ACT 63

H.B. NO. 3109

A Bill for an Act Relating to Dispensing Opticians.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 458-1, Hawaii Revised Statutes, is amended to read as follows:

**“§458-1 Dispensing optician defined.** An individual is deemed to be engaged in the occupation of dispensing optician when the individual prepares and dispenses lenses, spectacles, eyeglasses, or appurtenances thereto to the intended wearer thereof on written prescription from physicians or optometrists duly licensed to practice their professions, and in accordance with the prescriptions interprets, measures, adapts, fits, and adjusts the lenses, spectacles, eyeglasses, or appurtenances thereto to the human face based on the prescription or for the aid or correction of visual or ocular anomalies of the human eyes[-], or when the individual offers to sell or sells non-corrective contact lenses.”

SECTION 2. Section 458-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Nothing in this chapter applies to any physician, optometrist, or ophthalmologist licensed under the laws of the State, nor shall anything in this chapter ~~en-~~  
~~tained~~ prohibit the sale of glasses, sun glasses, colored glasses, or ~~occupational~~ eye devices if they do not have refractive values[-] and are not contact lenses.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 7, 2008.)

A Bill for an Act Relating to Corrections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 353-33, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved May 12, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Correctional Industries.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 354D-3, Hawaii Revised Statutes, is amended to read as follows:

**“§354D-3 Correctional industries program.** There is established a correctional industries program within the department. The administrator of the correctional industries program shall be appointed by the director without regard to chapter 76. The director may appoint other employees necessary to carry out the function of this chapter without regard to chapter 76; provided that the number of temporary exempt positions covered under this section shall not exceed [~~forty-five~~] sixty-five in any fiscal year.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2008.

(Approved May 12, 2008.)

A Bill for an Act Relating to Motor Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-271, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) This section shall not apply to:

- (1) Any motor vehicle rental company as defined in section 431:9A-141 that periodically ships in quantities of ten vehicles or more; [ø]

- (2) Licensed dealers who periodically ship in quantities of ten vehicles or more, or whose primary business is the auction of insurance salvage vehicles[-]; or
- (3) Drivers of vehicles traveling on an inter-island ferry; provided that such drivers present identification of the driver, a current certificate of registration for the vehicle, and proof of motor vehicle insurance. The inter-island ferry carrier shall keep a record of transporting the vehicle by recording the vehicle identification number and retaining the information for three years after the date of travel.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 12, 2008.)

**ACT 67**

S.B. NO. 2961

A Bill for an Act Making Appropriations for Claims Against the State, Its Officers, or its Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. The following sums or so much thereof as may be necessary for fiscal year 2007-2008 are appropriated out of the general revenues of the State of Hawaii to the department of the attorney general for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the State or its officers or employees for the overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amounts set forth opposite their names:

<b>JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:</b>	<b>AMOUNT</b>
<b>1. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:</b>	
Reale v. State of Hawaii, et al.	\$ 50,000.00
Civil No. 06-1-0928-05, First Circuit	<u>Settlement</u>
<b>SUBTOTAL:</b>	<b>\$ 50,000.00</b>
<b>2. DEPARTMENT OF AGRICULTURE:</b>	
Viela v. State of Hawaii, et al.	\$ 60,000.00
Civil No. 06-1-0268-02, First Circuit	<u>Settlement</u>
<b>SUBTOTAL:</b>	<b>\$ 60,000.00</b>
<b>3. DEPARTMENT OF EDUCATION:</b>	
In the Matter of the Arbitration Between Hawaii State Teachers Association, AFSCME Local 152, AFL-CIO and Kihei Public Charter High School (Grievance of John Loomis), Case No. 03-18	\$ 25,000.00 Settlement
Comeaux v. State of Hawaii, et al.	\$ 5,000.00



**ACT 67**

Civil No. 06-00341, USDC	Settlement
Graham v. State of Hawaii, et al. Civil No. 06-1-0013(3), Second Circuit	\$ 30,000.00 Settlement
Huddleston, et al. v. Kamaaina Care, Inc., et al., Civil No. 06-1-0077, Third Circuit	\$ 74,500.00 Settlement
Kaleuati, et al. v. Tonda, et al. Civil No. 07-00504, U.S.D.C.	\$ 185,000.00 <u>Settlement</u>
SUBTOTAL:	\$ 319,500.00
4. DEPARTMENT OF HEALTH:	
Enchanted Lakes Residential Association v. Dept. of Health Mediation Center of the Pacific No. 2007-0939	\$ 4,800.00 <u>Settlement</u>
SUBTOTAL:	\$ 4,800.00
5. DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT:	
Walsh, et al. v. City and County of Honolulu, et al. Civil No. 05-00378DAE, USDC	\$ 50,000.00 <u>Settlement</u>
SUBTOTAL:	\$ 50,000.00
6. DEPARTMENT OF HUMAN SERVICES:	
Aihara v. Dept. of Human Services Civil No. 05-1-0514-03, First Circuit	\$ 45,000.00 Settlement
Kahoohanohano, et al. v. Department Human Services, et al. Civil No. 03-1-0012(1), Second Circuit and Kahoohanohano, et al. v. Drelich, et al. Civil No. 03-1-0257(1), Second Circuit	\$ 833,153.80 Judgment
Ruiz, et al. v. State of Hawaii, et al. Civil No. 04-1-1739-09, First Circuit	\$ 350,000.00 <u>Settlement</u>
SUBTOTAL:	\$ 1,228,153.80
7. DEPARTMENT OF PUBLIC SAFETY:	
Bateman, et al. v. State of Hawaii Civil No. 06-1-1907-11, First Circuit	\$ 56,873.17 Judgment
Amount of judgment: \$ 55,573.40 4% interest from 12/13/07: \$ 1,299.77	
Branco v. State of Hawaii Civil No. 06-1-0755-05, First Circuit	\$ 12,357.46 Settlement
Gonsalves v. State of Hawaii Civil No. 06-1-1843-10, First Circuit	\$ 24,000.00 Settlement
Johnson v. State of Hawaii Civil No. 06-1-1430-08, First Circuit	\$ 15,000.00 Settlement
Jones v. State of Hawaii Civil No. 06-1-0194-02, First Circuit	\$ 15,220.18 Judgment
Kimberly v. State of Hawaii, et al. Civil No. 95-0718-03, First Circuit	\$ 91,619.02 Judgment

Amount of judgment:	\$ 87,245.58	
4% interest from 5/1/07:	\$ 4,373.44	
Kimberly v. State of Hawaii, et al. Civil No. 95-0718-03, First Circuit		\$ 225,000.00 Settlement
Lopez v. State of Hawaii Civil No. 05-1-0042(2), Second Circuit		\$ 22,500.00 Settlement
Pregil v. State of Hawaii, et al. Civil No. 06-1-0772-05, First Circuit		\$ 10,092.80 Judgment
Amount of judgment:	\$ 10,038.47	
4% interest from 4/11/07:	\$ 54.33	
Sampaio v. State of Hawaii Civil No. 06-1-0751-05, First Circuit		\$ 25,244.05 Judgment
Amount of judgment:	\$ 24,770.30	
4% interest from 2/22/08:	\$ 473.75	
Segawa v. State of Hawaii, et al. Civil No. 05-1-1562-09, First Circuit		\$ 50,000.00 <u>Settlement</u>
SUBTOTAL:		\$ 547,906.68
<b>MISCELLANEOUS CLAIMS:</b>		
Estate of Audrey Marie Au		\$ 500.00
Mutsue T. Kimata		\$ 131.40
Dennis Donovan		\$ 2,975.20
Cynthia C. Matsumura		\$ 125.00
Karen Y. Nakamura		\$ 484.00
SUBTOTAL:		\$ 4,215.60
TOTAL (SECTION 1):		\$ 2,264,576.08

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

## PART II

SECTION 2. The following sums or so much thereof as may be necessary for fiscal year 2007-2008 are appropriated out of the state highway fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

<b>JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:</b>	<b>AMOUNT</b>
<b>DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:</b>	
Antonio v. State of Hawaii Civil No. 06-1-0131-01, First Circuit	\$ 30,000.00 Settlement
Carvalho v. State of Hawaii Civil No. 05-1-2155-12, First Circuit and	\$ 30,000.00 Settlement
Carvalho v. State of Hawaii Civil No. 06-00677, USDC	
Dunn, et al. v. Department of Transportation, et al.	\$ 930,964.76

Civil No. 04-1-1330-07, First Circuit	Judgment
Amount of Judgment: \$ 911,051.16	
4% interest from 1/14/08:\$ 19,913.60	
Filimoehala, et al. v. City and County of Honolulu, et al.	\$ 2,600,000.00
Civil No. 04-1-1880-10, First Circuit	Settlement
Hashimoto v. Liftee, et al.	\$ 250,000.00
Civil No. 99-2462-06, First Circuit	Settlement
Hoffelt, et al. v. Tesoro, et al.	\$ 150,000.00
Civil No. 05-1-0480(3), Second Circuit	Settlement
Klink, et al. v. State of Hawaii	\$ 816,658.58
Civil No. 98-039, Third Circuit	Judgment
Madriaga, et al. v. Baldwin, et al.	\$ 25,000.00
Civil No. 04-1-0327(3), Second Circuit	Settlement
Scharsch v. State of Hawaii, et al.	\$ 20,000.00
Civil No. 05-1-0435-03, First Circuit	Settlement
Schlosser v. Lat, et al.	\$ 40,000.00
Civil No. 05-1-0474(3), Second Circuit	<u>Settlement</u>
SUBTOTAL:	\$ 4,892,623.34
TOTAL (SECTION 2)	\$ 4,892,623.34

The sums appropriated shall be expended by the department of transportation, highways division, for the purposes of this Act.

SECTION 3. The sums hereinabove may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon checks issued by the comptroller; provided departments must obtain the approval of the attorney general before payment of any claim can be made.

SECTION 4. Notwithstanding the sums hereinabove stated as interest upon judgments against the State, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this part, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which the statute applies.

### PART III

SECTION 5. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2009, shall lapse.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. This Act shall take effect upon its approval.

(Approved May 13, 2008.)

## ACT 68

S.B. NO. 1035

A Bill for an Act Relating to Makahiki Day Commemoration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Makahiki was a significant time throughout Polynesia. The rising of the makalii, Pleiades, marks the beginning of the Makahiki season that covers four consecutive months. Conflict and war were set aside and unity and peace prevailed as the people paid tribute to the god Lono.

After harvesting their crops, the people rested and let the land lay fallow. Food was offered in tribute to the chiefs and Lono in thanks for their wise stewardship because without wisdom, the land would become barren.

A white tapa banner that symbolized Lono made the circuit of the island. In 1778, Captain James Cook sailed into Kealahou Bay, also known as the path of God. His arrival coincided with the Makahiki Observance. The sails of his ship resembled the symbol of Lono. According to Hawaiian tradition, one day Lono would return. Thus, the people welcomed Captain James Cook as Lono. However, a seemingly minor incident led from the deification of Captain James Cook to his demise and changed the course of history forever.

To perpetuate the ancient wisdom of land conservation, abundance, unity, and peace during the four months of Makahiki, Polynesian regional governments celebrate the Makahiki season and have designated November 20th as the start of the Makahiki observance. Groups from Hawaii, Samoa, Tonga, New Zealand or Aotearoa, Easter Island or Rapa Nui, Wallis and Futuna, and the Marquesas Islands all gather in Tahiti to celebrate Matahiti Tau Auhune, a time of harvest.

SECTION 2. Chapter 8, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§8- Makahiki Commemoration Day.** November 20th of each year shall be known and designated as Makahiki Commemoration Day. This day shall not be construed as a state holiday.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon approval.

(Approved May 13, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 69

S.B. NO. 2785

A Bill for an Act Relating to District Court Jurisdiction.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 604-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided, the district courts shall have jurisdiction in all civil actions where the debt, amount, damages, or value of the property claimed

does not exceed [~~\$20,000,~~] \$25,000, except in civil actions involving summary possession or ejectment, in which case the district court shall have jurisdiction over any counterclaim otherwise properly brought by any defendant in the action if the counterclaim arises out of and refers to the land or premises the possession of which is being sought, regardless of the value of the debt, amount, damages, or property claim contained in the counterclaim. Attorney’s commissions or fees, including those stipulated in any note or contract sued on, interest, and costs, shall not be included in computing the jurisdictional amount. Subject to subsections (b) and (c), jurisdiction under this subsection shall be exclusive when the amount in controversy, so computed, does not exceed \$10,000. The district courts shall also have original jurisdiction of suits for specific performance when the fair market value of such specific performance does not exceed \$20,000 and original jurisdiction to issue injunctive relief in residential landlord-tenant cases under chapter 521.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.  
(Approved May 13, 2008.)

**ACT 70**

H.B. NO. 2894

A Bill for an Act Relating to Planned Community Associations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that chapter 421J, Hawaii Revised Statutes, should be construed broadly to apply to all situations in which real property owners or lessees have an express or implied obligation to pay assessments or to comply with covenants related to the use of common areas, architectural control, the maintenance of units, or use restrictions on units.

The legislature further finds that some planned communities and planned community associations that were created prior to the enactment of chapter 421J, may not constitute planned communities and planned community associations as those terms are presently defined, thereby depriving those property owners of the rights and protections provided by chapter 421J.

The purpose of this Act is to assure that planned community associations are able to effectively enforce assessments and restrictive covenants and to ensure that all property owners within planned communities and members of planned community associations are entitled to the rights and protections provided by chapter 421J, Hawaii Revised Statutes.

SECTION 2. Chapter 421J, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“**§421J- Interpretation.** This chapter and any association document subject thereto shall be liberally construed to facilitate the operation of the planned community association.

**§421J- Restatement of association documents.** (a) Notwithstanding any provision of this chapter, an association, by a resolution adopted by the board, may at

any time restate the association documents of the association to include amendments to the association documents.

(b) An association, by a resolution adopted by the board, may at any time, restate the association documents of the association to amend the association documents as necessary to conform with this chapter or any other applicable law, ordinance, or rule; provided that any association documents restated pursuant to this section shall:

- (1) Identify each portion so restated;
- (2) Contain a statement that those portions have been restated solely for purposes of information and convenience;
- (3) Identify the law, ordinance, or rule implemented by the amendment; and
- (4) Contain a statement that, in the event of any conflict, the restated association documents shall be subordinate to the cited law, ordinance, or rule.

The restated association documents shall be effective for all purposes as if adopted by a vote or written consent of the members.

(c) Upon the adoption of a resolution pursuant to subsection (a) or (b), the restated association documents shall state all of the operative provisions of the original association documents, together with a statement that the restated association documents correctly state the corresponding provisions of the association documents, and that the restated association documents supersede the original association documents and any relative amendments.

(d) A restated association document shall be recorded if the original document was recorded and the restated association documents shall supersede the original association documents and any relative amendments. In the event of any conflict, the restated association documents shall be subordinate to the original association documents and any relative amendments.”

SECTION 3. Section 421J-2, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “association” to read:

““Association” means a nonprofit, incorporated, or unincorporated organization ~~upon~~:

- (1) Upon which responsibilities are imposed and to which authority is granted in a declaration ~~[which] that~~ governs a planned community[-];  
or
- (2) That is a planned community association as defined under section 607-14.”

2. By amending the definition of “association documents” to read:

““Association documents” means the articles of incorporation or other document creating the association, if any, the bylaws of the association, the declaration or similar organizational documents and any exhibits thereto, any rules related to use of common areas, ~~[tø]~~ architectural control, ~~[tø]~~ maintenance of units, ~~[ø-ø]~~ restrictions on the use of units, or [tø]<sup>1</sup> payment of money as a regular assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas, as well as any amendments made to the foregoing documents.”

3. By amending the definition of “declaration” to read:

““Declaration” means any recorded ~~[instrument]~~ association document, however denominated, that imposes obligations on ~~[an-association]~~ the owners of the units with respect to maintenance or operational responsibilities for the common area ~~[and creates the authority in the association to impose on units, or on the owners or occupants of the units, any mandatory payment of money as a regular annual~~

assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas], architectural control, maintenance of units, or restrictions on the use of units. A declaration includes any amendment or supplement to the instruments described in this definition.”

4. By amending the definition of “planned community” to read:

““Planned community” means [a] one of the following:

(1) Real property, other than a condominium or a cooperative housing corporation or a time share plan, that is subject to a planned community association as defined under section 607-14; or

(2) A common interest community, other than a condominium or a cooperative housing corporation or a time share plan, which includes all of the following characteristics:

~~[(+)]~~(A) Real property subject to a recorded declaration placing restrictions and obligations on the owners of the real property [and providing for rights and responsibilities of] that are enforced or enforceable by a separate entity, the association[?], established for that purpose whether or not mentioned in the declaration, and:

~~[(A)]~~(i) ~~[Which]~~ That owns and maintains certain property within the planned community for the common use or benefit, or both, of the owners of units within the planned community;

~~[(B)]~~(ii) ~~[Which]~~ That is obligated to maintain certain property it does not own within the planned community for the common use or benefit, or both, of the owners of units within the planned community; or

~~[(C)]~~(iii) ~~[Which]~~ That is obligated to provide services to any such owners or units;

~~[(2)]~~(B) Individual owners own separate units [which] that are part of a planned community at least some of which are improved by or are to be improved by residential dwellings;

~~[(3)]~~(C) Owners have automatic and non-severable membership in an association by virtue of ownership of units within the planned community; and

~~[(4)]~~(D) Owners, other than a master developer or declarant, are obligated by any association document to pay mandatory assessments by virtue of ownership of a unit within the planned community.”

SECTION 4. Section 421J-12, Hawaii Revised Statutes, is amended to read as follows:

“~~[(h)]~~§421J-12~~[(h)]~~ **Amendment of association documents when no procedure provided.** (a) Whenever an association document provides that it may be amended by the vote of association members at a meeting, the association document may also be amended by the written consent of the same percentage of association members without a meeting.

(b) Whenever neither an association document nor any applicable law provide procedures for amendment of that document, the association document may be amended by the vote or written consent of association members representing three-fourths of the votes which association members are entitled to cast with respect to a declaration and two-thirds of the votes which association members are entitled to cast with respect to other association documents; provided that this section shall not apply to articles of incorporation or any association documents which by their terms or as a matter of law may be adopted or amended by the board of directors. Nothing in this section shall be deemed to supersede or override any provision of any asso-

ciation documents related to amendments, or any provision of any law pertaining to associations or corporations.

(c) For purposes of this section, a requirement in any association document that an owner must sign an amendment to that document shall be satisfied by the receipt of a written consent signed by the owner.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved May 14, 2008.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 71

S.B. NO. 2499

A Bill for an Act Relating to Taro.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 36, Session Laws of Hawaii 2007, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on [~~January 1, 2025.~~] July 1, 2008.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 14, 2008.)

## ACT 72

S.B. NO. 2464

A Bill for an Act Relating to the State Mammal.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaiian monk seal (*Monachus schauinslandi*) is the only marine mammal whose entire species range lies within the United States. It is one of only two endemic mammals found in Hawaii.

On November 23, 1976, it was listed as an endangered species pursuant to the Endangered Species Act and it remains listed as endangered today. The population of the Hawaiian monk seal has been in a 20-year constant decline and today there are only approximately 1,200 remaining. The majority of this population is in the Northwestern Hawaiian Islands, while there are an estimated 80 monk seals living in the main Hawaiian Islands.

In 1979, the legislature designated the humpback whale as the official marine mammal of the State. Part of the purpose for doing so was to increase awareness



## ACT 73

about the humpback whale, which was on the brink of extinction in the 60s. As a result of an increase in awareness regarding the humpback whale, its numbers have markedly increased. A purpose in designating the Hawaiian monk seal as the official state mammal is to raise awareness of it as an endangered species with the hope that this awareness will, like the humpback whale, result in increased protection and its repopulation.

The purpose of this Act is to recognize the importance and uniqueness of the Hawaiian monk seal to the Hawaiian Islands by establishing and designating the Hawaiian monk seal as the official state mammal.

SECTION 2. Chapter 5, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§5- State mammal. The Hawaiian monk seal (*Monachus schauinslandi*) is established and designated as the official mammal of the State.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved May 14, 2008.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 73

H.B. NO. 2614

A Bill for an Act Relating to Island Pacific Academy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$30,000,000, in one or more series, to assist Island Pacific Academy, Inc., a Hawaii not-for-profit corporation, to finance or refinance the planning, construction, improvement, and equipping of its educational facilities in the State of Hawaii. The legislature finds and determines that the planning, construction, improvement, and equipping of such educational facilities constitute a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing or refinancing thereof is assistance to a not-for-profit private nonsectarian and sectarian elementary school, secondary school, college, or university that serves the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department of budget and finance may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2013, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section. Such special purpose revenue bonds may be issued in one or more series for the refunding of the special purpose revenue bonds authorized in section 2 or in this section, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, such refunding special purpose revenue bonds with one or more proposed issues of special purpose revenue bonds authorized by any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2013.

SECTION 7. This Act shall take effect on July 1, 2008.

(Approved May 15, 2008.)

## ACT 74

H.B. NO. 2547

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Maui Preparatory Academy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$25,000,000, in one or more series, for the purpose of assisting Maui Preparatory Academy, a Hawaii not-for-profit corporation, to finance or refinance the planning, construction, improvement, and equipping of its educational facilities in the State of Hawaii. The legislature hereby finds and determines that the planning, construction, improvement,

and equipping of such educational facilities constitute a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing or refinancing thereof is assistance to a not-for-profit private nonsectarian and sectarian elementary school, secondary school, college, or university serving the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, or universities serving the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2013, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section. Such special purpose revenue bonds may be issued in one or more series for the refunding of the special purpose revenue bonds authorized in section 2 or in this section, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, such refunding special purpose revenue bonds with one or more proposed issues of special purpose revenue bonds authorized by any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2013.

SECTION 7. This Act shall take effect on July 1, 2008.

(Approved May 15, 2008.)

## ACT 75

H.B. NO. 2271

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Castle Medical Center and its Affiliates.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$30,000,000, in one or more series, for the purpose of assisting Castle Medical Center, a Hawaii not-for-profit corporation, and one or more of its nonprofit affiliates, to finance and refinance equipment purchases, and for the construction and improvement of health care facilities, including the following:

- (1) Remodeling and rebuilding existing health care facilities;
- (2) Constructing new health care facilities;
- (3) Purchasing new equipment;
- (4) Refinancing debt; and
- (5) Other related projects for Castle Medical Center and its nonprofit affiliates.

The legislature finds and determines that the activities and facilities of Castle Medical Center and its nonprofit affiliates constitute a project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit corporation that provides health care facilities to the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part II, chapter 39A, Hawaii Revised Statutes, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2013, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs

## ACT 76

described in section 2. In making this determination, the department of budget and finance shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by section 2.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2013.

SECTION 7. This Act shall take effect on July 1, 2008.

(Approved May 15, 2008.)

## ACT 76

H.B. NO. 2460

A Bill for an Act Relating to Condominiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-97, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-97 Association of apartment owners funds; handling and disbursement.** (a) The funds in the general operating account of the association of apartment owners shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall a managing agent commingle any association funds with the managing agent’s own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual apartment owners of a project and the payment of [sueh] ground lease rents to the ground lessor; provided that:

- (1) The collection is allowed by the provisions of the declaration, by-laws, master deed, master lease, or individual apartment leases of the project;
- (2) If a management contract exists, it requires the managing agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor;
- (3) The system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the association; and
- (4) No managing agent or association shall pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.

(c) All funds collected by an association, or by a managing agent for any association, shall be:

- (1) Deposited in a financial institution, including a federal or community credit union, located in the State and whose deposits are insured by an agency of the United States government;
- (2) Held by a corporation authorized to do business under article 8 of chapter 412;
- (3) Held by the United States Treasury; [or]
- (4) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, has an office in the state, and the accounts of which are held by member firms of the New York Stock Exchange or

National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation[-]; or

- (5) Placed through a federally insured financial institution located in the State for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service in federally insured financial institutions located in the United States.

(d) All funds collected by an association, or by a managing agent for any association, shall be invested only in:

- (1) Demand deposits, investment certificates, and certificates of deposit;
- (2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the apartment owners at an annual or special meeting of the association or by written consent of a majority of the apartment owners; ~~or~~
- (3) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the apartment owners at an annual or special meeting of the association or by written consent of a majority of the apartment owners; or
- (4) Certificates of deposit issued through the Certificate of Deposit Account Registry Service in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;

provided that before any investment longer than one year is made by an association, the board [~~must~~] shall approve the action; and provided further that the board [~~must~~] shall clearly disclose to owners all investments longer than one year at each year's association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board of directors. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board of directors. The commission may draft rules governing the handling and disbursement of condominium association funds.

~~[(d)]~~ (e) A managing agent or board of directors shall not transfer association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account.

~~[(e)]~~ (f) A managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, chapter 467, the rules of the commission, and all other applicable laws.

~~[(f)]~~ (g) Any person who embezzles or knowingly misapplies association funds received by a managing agent or association of apartment owners shall be guilty of a class C felony."

SECTION 2. Section 514B-149, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- "(c) (1) All funds collected by an association, or by a managing agent for any association, shall be:

- (A) Deposited in a financial institution, including a federal or community credit union, located in the State, pursuant to a resolution adopted by the board, and whose deposits are insured by an agency of the United States government;
  - (B) Held by a corporation authorized to do business under article 8 of chapter 412;
  - (C) Held by the United States Treasury; ~~[or]~~
  - (D) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation~~[-]; or~~
  - (E) Placed through a federally insured financial institution located in the State for investment in certificates of deposit issued through the Certificate of Deposit Account Registry Service in federally insured financial institutions located in the United States.
- (2) All funds collected by an association, or by a managing agent for any association, shall be invested only in:
- (A) Deposits, investment certificates, savings accounts, and certificates of deposit;
  - (B) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; ~~[or]~~
  - (C) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; or
  - (D) Certificates of deposit issued through the Certificate of Deposit Account Registry Service in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;

provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year's association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 15, 2008.)

## ACT 77

H.B. NO. 1978

A Bill for an Act Relating to Public Order.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 84, Session Laws of Hawaii 2004, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval and shall be repealed on December 31, [~~2009~~] 2012.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 15, 2008.)

## ACT 78

S.B. NO. 3076

A Bill for an Act Relating to Epidemiologists.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§321- Epidemiologists.** The department of health may establish up to ten permanent or temporary exempt positions known as epidemiologists for the purpose of investigating diseases and injuries which threaten the public health and safety. The positions shall be appointed by the director without regard to chapter 76.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved May 15, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 79

H.B. NO. 2917

A Bill for an Act Relating to Harbors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to require the department of transportation to allow:

- (1) A vessel with a use permit to moor in Kewalo basin to moor in Honolulu harbor; and



(2) A vessel with a use permit to moor in Honolulu harbor to moor in Kewalo basin, under certain conditions.

SECTION 2. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§266- Kewalo basin use permit; Honolulu harbor use permit; portability. (a) Notwithstanding any law to the contrary, the department of transportation shall allow, on a space available basis, a vessel with a use permit authorizing the vessel to moor in Kewalo basin to moor in Honolulu harbor at no additional cost and with no additional use permit required under the following conditions:

- (1) The manager of Kewalo basin prohibits entrance into Kewalo basin because of inclement weather or ocean conditions; provided that as soon as the manager of Kewalo basin opens the entrance to vessels, the vessel shall leave Honolulu harbor;
- (2) The owner or operator of a commercial fishing vessel desires to sell the owner’s or operator’s catch of fish to a business operating within Honolulu harbor or otherwise conduct business within Honolulu harbor; provided that the vessel shall not moor in Honolulu harbor for a period longer than is necessary to unload all or some of the catch of fish for sale or otherwise conduct business; and
- (3) The owner of the vessel is current in its payments of any moneys, rates, fees, dues, compensation, fines, or penalties assessed against the vessel that are due to the State.

(b) Notwithstanding any law to the contrary, the department with jurisdiction over Kewalo basin shall allow, on a space available basis, a vessel with a use permit authorizing the vessel to moor in Honolulu harbor to moor in Kewalo basin at no additional cost and with no additional use permit required subject to the discretion of the harbor manager of Kewalo basin.

(c) The director of transportation shall adopt rules pursuant to chapter 91, to implement this section.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 15, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 80**

H.B. NO. 3040

A Bill for an Act Relating to Public Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

**“§707- Indecent electronic display to a child.** (1) Any person who intentionally masturbates or intentionally exposes the genitals in a lewd or lascivious manner live over a computer online service, internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or other electronic device by:

- (a) A minor known by the person to be under the age of eighteen years;
- (b) Another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or
- (c) Another person who represents that person to be under the age of eighteen years,

is guilty of indecent electronic display to a child.

(2) Indecent electronic display to a child is a misdemeanor.”

SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters; section 386-98(d)(1) relating to fraud violations and penalties; section 431:10A-131(b)(2) relating to insurance fraud; section 431:10C-307.7(b)(2) relating to insurance fraud; section 432:1-106(b)(2) relating to insurance fraud; section 432D-18.5(b)(2) relating to insurance fraud; section 707-703 relating to negligent homicide in the second degree; section 707-711 relating to assault in the second degree; section 707-713 relating to reckless endangering in the first degree; section 707-716 relating to terroristic threatening in the first degree; section 707-721 relating to unlawful imprisonment in the first degree; section 707-732 relating to sexual assault or rape in the third degree; section 707-752 relating to promoting child abuse in the third degree; section 707-757 relating to electronic enticement of a child in the second degree; section 707-766 relating to extortion in the second degree; section 708-811 relating to burglary in the second degree; section 708-821 relating to criminal property damage in the second degree; section 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; section 708-831 relating to theft in the second degree; section 708-835.5 relating to theft of livestock; section 708-836 relating to unauthorized control of propelled vehicle; section 708-839.8 relating to identity theft in the third degree; section 708-839.55 relating to unauthorized possession of confidential personal information; section 708-852 relating to forgery in the second degree; section 708-854 relating to criminal possession of a forgery device; section 708-875 relating to trademark counterfeiting; section 710-1071 relating to intimidating a witness; section 711-1103 relating to riot; section 712-1203 relating to promoting prostitution in the second degree; section 712-1221 relating to gambling in the first degree; section 712-1224 relating to possession of gambling records in the first degree; section 712-1243 relating to promoting a dangerous drug in the third degree; section 712-1247 relating to promoting a detrimental drug in the first degree; section 846E-9 relating to failure to comply with covered offender registration requirements; section 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; section 134-8 relating to ownership, etc., of prohibited weapons; section 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony

offenses enumerated above, or any felony conviction of another jurisdiction, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
  - (ii) Where the instant conviction is for a class A felony—six years, eight months;
  - (iii) Where the instant conviction is for a class B felony—three years, four months; and
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
  - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
  - (iii) Where the instant conviction is for a class B felony—six years, eight months; and
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
  - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
  - (ii) Where the instant conviction is for a class A felony—twenty years;
  - (iii) Where the instant conviction is for a class B felony—ten years; and
  - (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.”

SECTION 3. Section 707-756, Hawaii Revised Statutes, is amended to read as follows:

**“§707-756 Electronic enticement of a child in the first degree.** (1) Any person who, using a computer or any other electronic device:

- (a) Intentionally or knowingly communicates:
  - (i) With a minor known by the person to be under the age of eighteen years;
  - (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or
  - (iii) With another person who represents that person to be under the age of eighteen years; [~~and~~]
- (b) With the intent to promote or facilitate the commission of a felony:
  - (i) That is a murder in the first or second degree;
  - (ii) That is a class A felony; or
  - (iii) That is [~~an~~] another covered offense as defined in section 846E-1[~~;~~].

agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and

- (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time[~~;~~].

is guilty of electronic enticement of a child in the first degree.

(2) Electronic enticement of a child in the first degree is a class B felony. Notwithstanding any law to the contrary, ~~[if a person sentenced under this section is sentenced to probation rather than]~~ a person convicted of electronic enticement of a child in the first degree shall be sentenced to an indeterminate term of imprisonment~~], the terms and conditions of probation shall include, but not be limited to, a term of imprisonment of one year.]~~ as provided by law.”

## PART II

SECTION 4. Section 846E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Clean record” means no conviction for a felony or covered offense, if placed on probation or parole, completion of probation or parole without more than one revocation, and, for sex offenders, successful completion of an appropriate sex offender treatment program, if such program was ordered.”

2. By amending the definitions of “crime against minors,” “registration information,” and “sexual offense” to read:

““Crime against minors”[;] excludes “sexual offenses” as defined in this section and means a criminal offense that consists of:

- (1) Kidnapping of a minor, ~~[except]~~ by someone other than a parent;
- (2) Unlawful imprisonment in the first or second degree that involves the unlawful imprisonment of a minor~~], except]~~ by someone other than a parent;
- (3) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraph (1) or (2); or
- (4) A criminal offense that is comparable to or which exceeds one of the offenses designated in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that, under the laws of this State would be a crime against minors as designated in paragraphs (1) through (3).

“Registration information” means the information specified in section ~~[[846E-2(e)].] 846E-2(d) and (e).~~

“Sexual offense” means an offense that is:

- (1) Set forth in section 707-730(1)(a), 707-730(1)(b), 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a), 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.6, ~~[or] 712-1202(1)(b), or 712-1203(1)(b)~~, but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b), or section 707-732(1)(b) if the perpetrator is under the age of eighteen;
- (2) An act defined in section 707-720 if the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An act that consists of:
  - (A) Criminal sexual conduct toward a minor~~];~~ including but not limited to an offense set forth in section 707- ;
  - (B) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
  - (C) Use of a minor in a sexual performance;
  - (D) Production, distribution, or possession of child pornography chargeable as a felony under section 707-750, 707-751, or 707-752;

(E) Electronic enticement of a child chargeable [~~as a felony~~] under section 707-756 [~~or~~], 707-757, or 707- if the [~~act involves~~:

- (i) ~~Sexual conduct;~~
- (ii) ~~Attempted sexual conduct; or~~
- (iii) ~~A proposal to engage in sexual conduct;]~~  
~~offense was committed with the intent to promote or facilitate the commission of another covered offense as defined in section 846E-1; or~~

(F) Solicitation of a minor to practice prostitution;

- (4) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that under the laws of this State would be a sexual offense as defined in paragraphs (1) through (3); or
- (5) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through (4).”

3. By repealing the definitions of “aggravated sex offender,” “aggravated sexual offense,” and “sexually violent predator”:

[~~“Aggravated sex offender” means:~~

- (1) ~~A person convicted of an “aggravated sexual offense” as defined in this section; or~~
- (2) ~~A person who is charged with an “aggravated sexual offense” as defined in this section and found unfit to proceed and is released into the community or acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704 and is released into the community.~~

~~“Aggravated sexual offense” means:~~

- (1) ~~A criminal offense described in section 707-730(1)(a), 707-730(1)(b), 707-731(1)(b), 707-732(1)(b), 707-732(1)(f), and 707-733.6, but excludes conduct that is criminal only because of the age of the victim, if the perpetrator is under the age of eighteen;~~
- (2) ~~A criminal offense that is comparable to one of the offenses designated in paragraph (1) or any federal, military, or out-of-state offense that, under the laws of this State would be an aggravated sexual offense as designated in paragraph (1); or~~
- (3) ~~An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) or (2).~~

~~“Sexually violent predator” means a person:~~

- (1) ~~Who is a sex offender; and~~
- (2) ~~Who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexual offenses.”]~~

SECTION 5. Section 846E-2, Hawaii Revised Statutes, is amended to read as follows:

“**§846E-2 Registration requirements.** (a) A covered offender shall register with the attorney general and comply with the provisions of this chapter for life or for a shorter period of time as provided in this chapter. A covered offender [~~who is not:~~

- (1) ~~An aggravated sex offender;~~
- (2) ~~A repeat covered offender; and~~
- (3) ~~A sexually violent predator;]~~

shall be eligible to petition the court in a civil proceeding for an order that the covered offender’s registration requirements under this chapter be terminated, as provided in section 846E-10.

(b) A person who establishes or maintains a residence in this state and who has not been designated as a covered offender by a court of this State but who has been designated as a covered offender, sex offender, offender against minors, repeat covered offender, sexually violent predator, or any other sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a covered offender, shall register in the manner provided in this section and shall be subject to community and public notification as provided in section 846E-3. A person who meets the criteria of this subsection is subject to the requirements and penalty provisions of section 846E-9 until the person successfully petitions the attorney general for termination of registration requirements by:

- (1) Providing an order issued by the court that designated the person as a covered offender, sex offender, offender against minors, repeat covered offender, sexually violent predator, or any other sexual offender designation in the state or jurisdiction in which the order was issued, which states that such designation has been removed or demonstrates to the attorney general that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and such person does not meet the criteria for registration as a covered offender under the laws of this State; or
- (2) Demonstrating that the out-of-state convictions upon which the sexual offender designation was established are not covered offenses under section 846E-1, thereby showing that such person does not meet the criteria for registration as a covered offender under the laws of this State.

If the covered offender is not satisfied with the decision of the attorney general on the request for termination of registration requirements, the covered offender may appeal the decision pursuant to chapter 91.

~~[(b)]~~ (c) Each provision of this chapter applicable to sex offenders shall also be applicable to offenders against minors, unless offenders against minors are specifically excluded. Whenever a covered offender's public information is made publicly accessible, separate registries shall be maintained for:

- (1) Sex offenders; and
- (2) Offenders against minors.

~~[(e)]~~ (d) Registration information for each covered offender shall ~~[consist of a recent photograph, verified fingerprints, and]~~ include a signed statement by the covered offender containing:

- (1) The name, all prior names, nicknames and pseudonyms, and all aliases used by the covered offender or under which the covered offender has been known and other identifying information, including date of birth~~;~~ and any alias date of birth, social security number~~;~~ and any alias social security number, sex, race, height, weight, and hair and eye color;
- (2) The actual address and telephone number of the covered offender's residence ~~[or mailing address;]~~ or any current, temporary address where the covered offender resides, or if an address is not available, a description of the place or area in which the covered offender resides for at least thirty nonconsecutive days within a sixty-day period, and for each address or place where the covered offender resides, how long the covered offender has resided there;
- (3) The actual address or description of the place or area, the actual length of time of the stay, and telephone number where the covered offender

is staying for a period of more than ten days, if other than the stated residence;

- (4) If known, the future address and telephone number where the covered offender is planning to reside, if other than the stated residence;
- (5) Any electronic mail address, any instant message name, any Internet designation or moniker, and any Internet address used for routing or self-identification;
- (6) Any cell phone number and other designations used for routing or self-identification in telephonic communications;
- ~~(5)~~ (7) Names and, if known, actual business addresses of current and known future employers, including information for any place where the covered offender works as a volunteer or otherwise works without remuneration, and the starting and ending dates of any such employment;
- (8) For covered offenders who may not have a fixed place of employment, a description of the places where such a covered offender works, such as information about normal travel routes or the general area or areas in which the covered offender works;
- (9) Professional licenses held by the covered offender;
- ~~(6)~~ (10) Names and actual addresses of current and known future educational institutions with which the covered offender is affiliated in any way, whether or not compensated, including but not limited to affiliation as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- ~~(7)~~ (11) The year, make, model, color, and license or registration or other identifying number of all vehicles, including automobiles, watercrafts, and aircrafts, currently owned or operated by the covered offender[;] and the address or description of the place or places where the covered offender's vehicle or vehicles are habitually parked, docked, or otherwise kept;
- (12) Passports and information about the passports, if the covered offender has passports, and documents establishing immigration status and information about these documents, if the covered offender is an alien;
- ~~(8)~~ (13) A statement listing all covered offenses for which the covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704;
- ~~(9)~~ (14) A statement indicating whether the covered offender has received or is currently receiving treatment ordered by a court of competent jurisdiction or by the Hawaii paroling authority;
- ~~(10)~~ (15) A statement indicating whether the covered offender is a United States citizen; and
- ~~(11)~~ (16) Any additional identifying information about the covered offender.

(e) The following information shall also be included in the registry for each covered offender:

- (1) A current photograph of the covered offender;
- (2) A physical description of the covered offender, including a description of particular identifying characteristics such as scars or tattoos;
- (3) Confirmation that the covered offender has provided digitized fingerprints and palm prints of the covered offender;
- (4) Judgment of conviction, judgment of acquittal, or judicial determination of unfitness to proceed documenting the criminal offense or offenses for which the covered offender is registered;

- (5) The text, or an electronic link to the text, of the provision of law defining the criminal offense or offenses for which the covered offender is registered;
- (6) The criminal history of the covered offender, or an electronic link to the criminal history, including the date of all arrests and convictions, the status of parole, probation, or supervised release, registration status, and the existence of any outstanding arrest warrants for the covered offender;
- (7) Confirmation that the covered offender has provided a DNA buccal swab sample as required by chapter 844D;
- (8) Digitized copies of a valid driver's license or identification card issued to the covered offender, or an electronic link to such records; and
- (9) Digitized copies of passports and documents establishing immigration status, or an electronic link to such records.

~~(d)~~ (f) Whenever a covered offender provides registration information, during initial registration as a covered offender or when providing notice of a change in registration information, the covered offender also shall sign a statement verifying that all of the registration information is accurate and current.

~~(e)~~ (g) In addition to the requirement under subsection (a) to register with the attorney general and comply with the provisions of this chapter until a court relieves the covered offender of the registration requirements of this chapter, each covered offender shall also register in person with the chief of police where the covered offender resides or is present. Registration under this subsection is for the purpose of providing the covered offender's photograph, fingerprints, and registration information. Registration under this subsection is required whenever the covered offender, whether or not a resident of this [State,] state, remains in this [State] state for more than ten days or for an aggregate period exceeding thirty days in one calendar year. Covered offenders required to register in person with the chief of police under this subsection shall register no later than three working days after the earliest of:

- (1) Arrival in this [State,] state;
- (2) Release from incarceration;
- (3) Release from commitment;
- (4) Release on furlough;
- (5) Conviction for a covered offense, unless incarcerated;
- (6) Release on probation;
- (7) Placement on parole; or
- (8) Arrival in a county in which the covered offender resides or expects to be present for a period exceeding ten days.

In addition to any other requirement to register under this subsection or subsection (a), each covered offender shall report in person every five years until June 30, 2009, and beginning on July 1, 2009, every year, within the thirty-day period following the offender's date of birth, to the chief of police where the covered offender resides [for purposes of having a new photograph taken,], or to such other department or agency that may be designated by the attorney general in rules adopted pursuant to chapter 91 for purposes of the administration of this subsection, and shall review the existing information in the registry that is within the offender's knowledge, correct any information that has changed or is inaccurate, provide any new information that may be required, and allow the police and such other department or agency designated by the attorney general to take a current photograph of the offender.

~~(f)~~ (h) The registration provisions of this section shall apply to all covered offenders without regard to:

- (1) The date of the covered offender's conviction;
- (2) The date of finding, pursuant to chapter 704, of the covered offender's unfitness to proceed; or



- (3) The date of the covered offender’s acquittal due to mental disease, disorder, or defect, pursuant to chapter 704.”

SECTION 6. Section 846E-3, Hawaii Revised Statutes, is amended to read as follows:

“§846E-3 Access to registration information. (a) Registration information shall be disclosed as follows:

- (1) The information shall be disclosed to law enforcement agencies for law enforcement purposes;
  - (2) The information shall be disclosed to government agencies conducting confidential background checks; and
  - (3) The attorney general and any county police department shall release public information as provided in subsection (b) concerning a specific person required to register under this chapter; provided that the identity of a victim of an offense that requires registration under this chapter shall not be released.
- (b) For purposes of this section, “public information” means:
- (1) Name, prior names, nicknames and pseudonyms, and all aliases used by the covered offender or under which the covered offender has been known;
  - (2) The year of the covered offender’s date of birth and the year of the covered offender’s alias dates of birth;
  - (3) A physical description of the covered offender, including a description of particular identifying characteristics such as scars or tattoos;
  - [(2)] (4) The actual address where the covered offender resides [and] or any current, temporary address where the covered offender resides or, if an address is not available, a description of any place or area in which the covered offender resides for at least thirty nonconsecutive days within a sixty-day period, and, for each address or place where the covered offender resides, how long the covered offender has resided there;
  - [(3)] (5) The actual address or description of the place or area where the covered offender is staying for more than ten days, if other than the stated residence[;], and the actual length of time of the stay;
  - [(4)] (6) The future actual address, if known, where the covered offender is planning to reside, if other than the stated residence;
  - [(5)] (7) The street name and zip code of the covered offender’s current locations of employment[;], including information for any place where the covered offender works as a volunteer or otherwise works without remuneration;
  - (8) For covered offenders who may not have a fixed place of employment, a description of the places where such a covered offender works;
  - (9) Professional licenses held by the covered offender;
  - [(6)] (10) Names and actual addresses of current and known future educational institutions with which the covered offender is affiliated as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
  - [(7)] (11) The year, make, model, color, and license number of all vehicles, including automobiles, watercrafts, and aircrafts, currently owned or operated by the covered offender, excluding vehicles operated exclusively for purposes of work;
  - [(8)] (12) A statement listing all covered offenses for which the covered offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704; [and]

(13) Judgment of conviction, judgment of acquittal, or judicial determination of unfitness to proceed documenting the criminal offense or offenses for which the covered offender is registered;

(14) The text, or an electronic link to the text, of the provision of law defining the criminal offense or offenses for which the covered offender is registered; and

~~[(9)]~~ (15) A recent photograph of the covered offender.

The identity of any victim of a sexual offense shall not be disclosed and any documentation containing such information shall be redacted to prevent disclosure.

(c) To facilitate community notification, after a covered offender registers or updates a registration, the attorney general may provide public information in the registry about that offender to any organization, company, or individual who requests such notification pursuant to procedures established by the attorney general through rules adopted pursuant to chapter 91.

(d) A covered offender may seek correction of erroneous public information by petitioning the attorney general to make the correction. If the covered offender is not satisfied with the decision of the attorney general on the request for correction, the covered offender may appeal the decision pursuant to chapter 91.

~~[(e)]~~ (e) Public access to a covered offender's public information shall be permitted with regard to each covered offender beginning the next working day following the filing of a judgment of conviction, a finding of unfitness to proceed or an acquittal due to mental disease, disorder, or defect, for a covered offense, or as soon thereafter as is practical. When a notice of appeal has been filed, the public information shall note that the covered offender has filed a notice of appeal. The public information shall be removed upon the reversal of the covered offender's conviction or the granting of a pardon to the covered offender. ~~[Public access shall continue until the expiration of at least the following periods:~~

- ~~(1) Forty years after sentencing or release, whichever is later, of a sexually violent predator or a repeat covered offender with at least two separate convictions for a crime for which this chapter requires registration, one of which is a felony;~~
- ~~(2) Thirty years after sentencing or release, whichever is later, of any covered offender who has been convicted of an aggravated sexual offense;~~
- ~~(3) Twenty-five years after sentencing or release, whichever is later, of any covered offender who is not subject to paragraph (1) or (2), and whose most serious covered offense conviction, except for a conviction under section 707-730(1)(c), is a class A felony or its non-Hawaii equivalent;~~
- ~~(4) Fifteen years after a covered offender's date of sentencing or release, whichever is later, for those covered offenders who are not subject to paragraphs (1) through (3) and whose most serious covered offense conviction is a class B felony, or a conviction under section 707-730(1)(c), or its non-Hawaii equivalent; or~~
- ~~(5) Ten years after a covered offender's date of sentencing or release, whichever is later, for those covered offenders who are not subject to paragraphs (1) through (4) and:
 
  - ~~(A) Whose most serious covered offense conviction is a class C felony or its non-Hawaii equivalent; or~~
  - ~~(B) Have been convicted of a second or subsequent misdemeanor covered offense when all of the previous covered offenses are also misdemeanors.~~~~

~~(d)]~~ (f) Public access authorized by this section ~~[shall be accomplished by the following methods:~~

- (1) ~~Public access to the public information for each covered offender subject to subsection (e), paragraphs (1) through (4)] shall be provided by both public [internet] Internet access and on-site public access [or;~~
- (2) ~~Public access to the public information for each covered offender subject to subsection (e), paragraph (5) shall be provided by on-site public access];~~

provided that on-site public access shall be provided for each covered offender at the Hawaii criminal justice data center and at one or more designated police stations in each county, to be designated by the attorney general, between the hours of 8:00 a.m. and 4:30 p.m. on weekdays, excluding holidays.

~~(e) After~~ (g) Public access to the public information for each covered offender shall be permitted while the covered offender is subject to sex offender registration, except that after forty years have elapsed after release or sentencing, whichever is later, [for covered offenders subject to subsection (e), paragraph (1); thirty years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (e), paragraph (2); twenty-five years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (e), paragraph (3); fifteen years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (e), paragraph (4); and ten years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (e), paragraph (5);] a covered offender may petition the court in a civil proceeding to terminate public access. In the civil proceeding to terminate public access, the State shall be represented by the attorney general; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency that prosecuted the covered offender for the most recent covered offense within the [State] state to represent the State. For covered offenders who have never been convicted of a covered offense within the State of Hawaii, the attorney general shall represent the State; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency for the county in which the covered offender resides to represent the State. The court may order this termination upon substantial evidence and more than proof by a preponderance of the evidence that ~~[the covered offender]~~:

- (1) ~~[Has]~~ The covered offender has had no new convictions for covered offenses;
- (2) ~~[Is]~~ The covered offender is very unlikely to commit a covered offense ever again; and
- (3) Public access to the covered offender's public information will not assist in protecting the safety of the public or any member thereof;

provided that a denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial.

~~(f)~~ (h) If a covered offender has been convicted of only one covered offense and that covered offense is a misdemeanor, the covered offender shall not be subject to the public access requirements set forth in this section.

~~(g)~~ (i) The following message shall be posted at both the site of [internet] Internet access and on-site public access locations:

"Information regarding covered offenders is permitted pursuant to chapter 846E. Public access to this information is based solely on the fact of each offender's criminal conviction and is not based on an estimate of the offender's level of dangerousness. By allowing public access to this information, the State makes no representation as to whether the covered offenders listed are dangerous. Any person who uses the information in this registry to injure, harass, or commit a criminal act against any person included in the registry may be subject to criminal prosecution, civil liability, or both."

~~[(h)]~~ (j) The public access provisions of this section shall apply to all covered offenders without regard to the date of conviction.

~~[(i)]~~ ~~(k)~~ “Conviction” as used in this section means:

- (1) A judgment on the verdict, or a finding of guilt after a plea of ~~[[~~guilty~~]]~~ or nolo contendere, excluding the adjudication of a minor;
- (2) A finding of unfitness to proceed resulting in the release of the covered offender into the community, excluding such a finding as to a minor; or
- (3) An acquittal due to a physical or mental disease, disorder, or defect pursuant to chapter 704 resulting in the release of the covered offender into the community, excluding such acquittal as to a minor.”

SECTION 7. Section 846E-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The chief of police shall transmit any covered offender registration information required by this chapter to the attorney general, by entering the information into a statewide record system, if the information has not previously been entered into the system, and also shall provide the attorney general with a photograph and fingerprints of the covered offender, taken at the time the covered offender registers with the chief of police. The covered offender shall report in person every five years until June 30, 2009, and beginning on July 1, 2009, every year, within the thirty-day period following the offender’s date of birth, to the chief of police where the covered offender’s residence is located ~~[for purposes of having a new photograph taken.], or to such other department or agency that may be designated by the attorney general in rules adopted pursuant to chapter 91 for purposes of the administration of this subsection,~~ and shall review the existing information in the registry that is within the offender’s knowledge, correct any information that has changed or is inaccurate, provide any new information that may be required, and allow the police and such other department or agency designated by the attorney general to take a current photograph of the offender.”

SECTION 8. Section 846E-9, Hawaii Revised Statutes, is amended to read as follows:

**“§846E-9 Failure to comply with covered offender registration requirements.** (a) A person commits the offense of failure to comply with covered offender registration requirements if the person is required to register under this chapter and the person intentionally, knowingly, or recklessly:

- (1) Fails to register with the attorney general by providing to the attorney general or the Hawaii criminal justice data center the person’s registration information;
- (2) Fails to report in person every five years until June 30, 2009, and beginning on July 1, 2009, once every year, during the thirty-day period following the offender’s date of birth, to the chief of police where the covered offender’s residence is located, ~~[for purposes of having a new photograph taken within five years after the previous photograph was taken.<sup>1</sup>] or to such other department or agency<sup>2</sup> designated by the attorney general;~~
- (3) While reporting to the chief of police or such other department or agency designated by the attorney general, fails to correct information in the registry within the offender’s knowledge that has changed or is inaccurate regarding information required by section 846E-2(d)(1) through (12);

- (4) While reporting to the chief of police or such other department or agency designated by the attorney general, fails to provide new information that may be required by section 846E-2(d)(1) through (12);
- (5) While reporting to the chief of police or such other department or agency designated by the attorney general, does not allow the police or other designated department or agency to take a current photograph of the person;
- ~~(3)~~ (6) Fails to register in person with the chief of police having jurisdiction of the area where the covered offender resides or is present within three working days whenever the provisions of section 846E-2(g)<sup>3</sup> require the person to do so;
- ~~(4)~~ (7) Fails to notify the attorney general or the Hawaii criminal justice data center of a change of any of the covered offender’s registration information in writing within three working days of the change;
- ~~(5)~~ (8) Provides false registration information to the attorney general, the Hawaii criminal justice data center, or a chief of police;
- ~~(6)~~ (9) Signs a statement verifying that all of the registration information is accurate and current when any of the registration information is not substantially accurate and current;
- ~~(7)~~ (10) Having failed to establish a new residence within the ten days while absent from the person’s registered residence for ten or more days:
  - (A) Fails to notify the attorney general in writing within three working days that the person no longer resides at the person’s registered residence; or
  - (B) Fails to report to a police station in the [State] state by the last day of every month; or
- ~~(8)~~ (11) Fails to mail or deliver the periodic verification of registration information form to the attorney general within ten days of receipt, as required by section 846E-5; provided that it shall be an affirmative defense that the periodic verification form mailed to the covered offender was delivered when the covered offender was absent from the registered address and the covered offender had previously notified the Hawaii criminal justice data center that the covered offender would be absent during the period that the periodic verification form was delivered.

(b) ~~[Any person required to register under this chapter who intentionally or knowingly violates subsection (a) shall be guilty of]~~ Failure to comply with covered offender registration requirements is a class C felony.

~~[(c) Any person required to register under this chapter who recklessly violates subsection (a) shall be guilty of a misdemeanor.~~

~~(d) For any second or subsequent offense, any person required to register under this chapter who intentionally, knowingly, or recklessly violates subsection (a) shall be guilty of a class C felony.]”~~

SECTION 9. Section 846E-10, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§846E-10[H] Termination of registration requirements. (a) Tier 3 offenses. A covered offender whose [most serious covered offense is a class A felony or its non-Hawaii equivalent, who has substantially complied with the registration requirements of this chapter for the previous twenty-five years, who is not a sexually violent predator, who is not an aggravated sex offender, and who is not a repeat covered offender, may petition the court, in a civil proceeding, for termination of registration requirements on the ground that registration is no longer necessary for the protection of the public.] covered offense is any of the following offenses shall~~

register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements:

- (1) Any offense set forth in section 707-730(1)(a), (b), (d), or (e), 707-731(1)(a) or (b), 707-732(1)(a), (b), or (f), or 707-733.6;
- (2) An offense set forth in section 707-720; provided that the offense involves kidnapping of a minor by someone other than a parent;
- (3) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1) or (2);
- (4) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), or (3); or
- (5) Any federal, military, or out-of-state offense that is comparable to one of the offenses in paragraph (1), (2), or (3).

(b) A repeat covered offender shall register for life and, except as provided in subsection (e), may not petition the court, in a civil proceeding, for termination of registration requirements.

[(b)] (c) Tier 2 offenses. A covered offender [whose most serious covered offense is a class B felony or its non-Hawaii equivalent,] who has maintained a clean record for the previous twenty-five years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous [fifteen] twenty-five years, or for the portion of that twenty-five years that this chapter has been applicable, and who is not [a sexually violent predator, who is not an aggravated sex offender, and who is not] a repeat covered offender[;] may petition the court, in a civil proceeding, for termination of registration requirements [on the ground that registration is no longer necessary for the protection of the public.]; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-730(1)(c), 707-731(1)(c), 707-732(1)(c), 707-750, 707-751, 712-1202(1)(b), or 712-1203(1)(b);
- (2) An offense set forth in section 707-720; provided that the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An offense set forth in section 707-756 that includes an intent to promote or facilitate the commission of another felony covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (6) Any federal, military, or out-of-state offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4).

[(e)] (d) Tier 1 offenses. A covered offender [whose most serious covered offense is a class C felony or its non-Hawaii equivalent, or a misdemeanor or its non-Hawaii equivalent,] who has maintained a clean record for the previous ten years, excluding any time the offender was in custody or civilly committed, and who has substantially complied with the registration requirements of this chapter for the previous ten years, or for the portion of that ten years that this chapter has been applicable, and who is not [a sexually violent predator, who is not an aggravated sex offender, and who is not] a repeat covered offender[;] may petition the court, in a civil proceeding, for termination of registration requirements [on the ground that registration is no longer necessary for the protection of the public.]; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-732(1)(d) or (e), 707-733(1)(a), 707-752, 707-

- (2) An offense set forth in section 707-721 or 707-722; provided that the offense involves unlawful imprisonment of a minor by someone other than a parent;
- (3) An offense set forth in section 707-757 that includes an intent to promote or facilitate the commission of another covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or
- (6) Any federal, military, or out-of-state offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4).

(e) Notwithstanding any other provisions in this section, any covered offender, forty years after the covered offender's date of release or sentencing, whichever is later, for the covered offender's most recent covered offense, may petition the court, in a civil proceeding, for termination of registration requirements.

(f) In the civil proceeding for termination of registration requirements, the State shall be represented by the attorney general; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency that prosecuted the covered offender for the most recent covered offense within the state to represent the State. For covered offenders who have never been convicted of a covered offense within the State of Hawaii, the attorney general shall represent the State; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting agency for the county in which the covered offender resides to represent the State. The court may order this termination upon substantial evidence and more than proof by a preponderance of the evidence that:

- (1) The covered offender has met the statutory requirements of eligibility to petition for termination;
- (2) The covered offender has substantially complied with registration requirements;
- (3) The covered offender is very unlikely to commit a covered offense ever again; and
- (4) Registration by the covered offender will not assist in protecting the safety of the public or any member thereof.

[(d)] (g) A denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial."

SECTION 10. Section 846E-11, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 846E-13, Hawaii Revised Statutes, is repealed.

### PART III

SECTION 12. The federal Sex Offender Registration and Notification Act is Title I of the Adam Walsh Child Protection and Public Safety Act of 2006, Public Law No. 248-109, (Adam Walsh Act). The Adam Walsh Act requires the fifty states, the District of Columbia, the five principal United States territories, and federally recognized Indian tribes that function as sex offender registration jurisdictions to conform their laws by July 29, 2009, to guidelines for sex offender registration adopted by the Department of Justice. If a jurisdiction fails to substantially comply with the guidelines, the jurisdiction faces the loss of ten per cent of any federal funds it may receive pursuant to the Edward Byrne Memorial Justice Assistance Grant program.

SECTION 13. (a) There is established the Adam Walsh Act compliance working group. The working group shall be composed of the following:

- (1) The attorney general;
- (2) The director of public safety;
- (3) The director of the office of youth services;
- (4) The state public defender;
- (5) The administrative director of the courts;
- (6) The chief of police of the city and county of Honolulu;
- (7) A member of the Hawaii Prosecuting Attorneys Association;
- (8) A representative of a victim advocacy program who is not employed with an agency or entity otherwise represented on the working group and who shall be selected by the attorney general;
- (9) A representative of the American Civil Liberties Union; and
- (10) A representative of the Hawaii Criminal Defense Attorneys Association.

(b) The working group shall:

- (1) Determine which Hawaii laws, including chapter 846E, Hawaii Revised Statutes, need to be amended and whether any new laws need to be enacted to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it; including provisions on:
  - (A) Registration of juveniles;
  - (B) Lifetime registration;
  - (C) More frequent periodic in-person verification; and
  - (D) Classification of most serious covered offenses and duration of registration requirements for tier 1 offenses;
- (2) Identify what resources are necessary for the State to implement any new or amended laws to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it;
- (3) Identify all sources of funding, including federal grants and legislative appropriations, that may be available to implement programs necessary for compliance with the Adam Walsh Act and the Department of Justice guidelines implementing it;
- (4) Consider whether the additional costs that may be incurred to comply with the Adam Walsh Act and the Department of Justice guidelines implementing it outweigh the Edward Byrne Memorial Justice Assistance Grant funds that would be retained by compliance and any other benefits attributable to compliance;
- (5) Review the provisions of Part II of this Act, as those measures pertain to the sex offender registry laws; and
- (6) Draft proposed legislation necessary to bring the State into compliance with the Adam Walsh Act and the Department of Justice guidelines implementing it.

(c) The department of the attorney general shall convene the working group and provide the administrative, technical, and clerical support services necessary to assist the working group in achieving its purpose as required under this Act.

(d) The working group shall submit a report of its findings and recommendations, including any proposed legislation to the legislature, no later than twenty days prior to the convening of the regular session of 2009.

(e) The Adam Walsh Act compliance working group shall cease to exist after June 30, 2009.



PART IV

SECTION 14. Except for Section 8 of this Act, part II of this Act shall apply to any acts committed prior to, on, or after the effective date of Part II of this Act.

SECTION 15. Part I of this Act and Section 8 of this Act do not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act.

SECTION 16. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>4</sup>

SECTION 18. This Act shall take effect upon its approval; provided part II of this Act shall take effect on January 1, 2009.

(Approved May 16, 2008.)

Notes

1. Prior to amendment a semicolon appeared here.
2. "Agency" should be underscored.
3. Prior to amendment "846E-2(e)" appeared here.
4. Edited pursuant to HRS §23G-16.5.

ACT 81

H.B. NO. 2346

A Bill for an Act Relating to Endangering the Welfare of a Minor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 709-903.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Except as provided in subsection (2), a person commits the offense of endangering the welfare of a minor in the first degree if, having care or custody of a minor, the person:

- (a) Intentionally or knowingly allows another person to inflict serious or substantial bodily injury on the minor; or
- (b) Intentionally or knowingly causes or permits the minor to inject, ingest [methamphetamine-], inhale, or otherwise introduce into the minor's body any controlled substance listed in sections 329-14, 329-16, 329-18, and 329-20 that has not been prescribed by a physician for the minor, except as permitted under section 329-122."

SECTION 2. Section 709-904, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Except as provided in section 709-903.5(2), a person commits the offense of endangering the welfare of a minor in the second degree if, having care or custody of a minor, the person:

- (a) Recklessly allows another person to inflict serious or substantial bodily injury on the minor; or
- (b) Recklessly causes or permits the minor to inject, ingest [~~methamphetamine~~], inhale, or otherwise introduce into the minor's body any controlled substance listed in sections 329-14, 329-16, 329-18, and 329-20 that has not been prescribed by a physician for the minor, except as permitted under section 329-122. This subsection shall not apply to nursing mothers who may cause the ingestion or introduction of detectable amounts of any controlled substance listed in sections 329-14, 329-16, 329-18, and 329-20 to their minor children through breastfeeding.

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2008.

(Approved May 16, 2008.)

## ACT 82

H.B. NO. 2770

A Bill for an Act Relating to Bridge to Hope Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the recent changes to the rules of the federal temporary assistance for needy families program, which prohibit baccalaureate education as countable work activities and limit educational activities to one year of vocational education are not consistent with the State's intention to include education and training as one of the pathways to economic self-sufficiency. Although the department of human services has implemented an expanded education policy for first to work participants, Act 276, Session Laws of Hawaii 2000, which amended chapter 346, Hawaii Revised Statutes, to create the bridge to hope education program, applies only to temporary assistance for needy families. Currently, temporary assistance to other needy families participants use the expanded education options due to the recent federal limitations on educational activities.

Since its enactment of the bridge to hope post-secondary education benefits program within the department of human services in July of 2000, the legislature has affirmed the State's support for access to post-secondary education by participants in the federally funded temporary assistance for needy families welfare program. Heads of households often require additional skills and knowledge to increase their earning capacity to enable them to earn a self-sufficient wage. Since July 2001, the bridge to hope student employment and academic support program at the University of Hawaii has served over six hundred individuals with one hundred fifty of those individuals earning their associate of arts degrees and seventy others earning their bachelor of arts degrees.

The purpose of this Act is to clarify eligibility requirements of and expand the bridge to hope program to enable all heads of households who are receiving financial assistance and participating in the first to work program to pursue a full range of educational activities as part of their work activities.

SECTION 2. Section 346-68, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is created within the department a post-secondary education benefits program, to be known as the bridge to hope program, for heads of households in the ~~[temporary assistance to needy families]~~ first to work program.

(b) To receive assistance under this program, the ~~[single parent]~~ participant shall:

- (1) Be enrolled as a student each term[~~s~~] in an approved course of study including, but not limited to, vocational education;
- (2) Maintain passing grades or better throughout the course of study; and
- (3) Meet work activity requirements as defined by the department.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 20, 2008.)

**ACT 83**

H.B. NO. 3151

A Bill for an Act Relating to Electronic Permitting Fees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to allow certain environmental programs of the department of health to remove any financial disincentive to conducting electronic business with them.

SECTION 2. Chapter 321, Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

“**§321- Fees for electronic applications and payments.** (a) Any departmental program that collects fees for the issuance of permits, licenses, certificates, or similar approvals, under chapters 340E, 340F, 342D, 342H, 342J, 342L, and that is required to deposit those fees to the credit of the general fund, may first deduct any electronic and credit card processing fees or charges that are made pursuant to agreements between the department and electronic services and credit card services providers from the total amount received by the department from the applicant for each payment made electronically.

(b) For purposes of this section, the term “credit card” includes credit cards, charge cards, and debit cards.

(c) A person making an electronic payment to the department remains liable for the underlying obligation except to the extent that the department realizes final payment of the underlying obligation in cash or the equivalent. If the credit card issuer, bank, or other guarantor of payment in the transaction does not pay the department, then the underlying obligation survives, and the department retains all remedies for enforcement that would have applied if the transaction had not occurred. No contract may modify the provisions of this subsection. This subsection, however, does not make the underlying obligor liable for any electronic or credit card fees paid to an electronic services provider or credit card issuer or party other than the department.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 20, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 84**

H.B. NO. 2164

A Bill for an Act Relating to the Cancer Research Special Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 245-15, Hawaii Revised Statutes, is amended to read as follows:

**“§245-15 Disposition of revenues.** All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations to be kept and accounted for as provided by law; provided that, of the moneys collected under the tax imposed pursuant to:

- (1) Section 245-3(a)(5), after September 30, 2006, and prior to October 1, 2007, 1.0 cent per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses[;] and for capital expenditures;
- (2) Section 245-3(a)(6), after September 30, 2007, and prior to October 1, 2008:
  - (A) 1.5 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses[;] and for capital expenditures;
  - (B) 0.25 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5; and
  - (C) 0.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (3) Section 245-3(a)(7), after September 30, 2008, and prior to October 1, 2009:
  - (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses[;] and for capital expenditures;
  - (B) 0.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 0.25 cents per cigarette shall be deposited to the credit of the community health centers special fund; and
  - (D) 0.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (4) Section 245-3(a)(8), after September 30, 2009, and prior to October 1, 2010:
  - (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section

- 304A-2168, for research and operating expenses[;] and for capital expenditures;
- (B) 0.75 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 0.75 cents per cigarette shall be deposited to the credit of the community health centers special fund; and
  - (D) 0.5 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (5) Section 245-3(a)(9), after September 30, 2010, and prior to October 1, 2011:
- (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses[;] and for capital expenditures;
  - (B) 1.0 cent per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 1.0 cent per cigarette shall be deposited to the credit of the community health centers special fund; and
  - (D) 1.0 cent per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234; and
- (6) Section 245-3(a)(10), after September 30, 2011, and thereafter:
- (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses[;] and for capital expenditures;
  - (B) 1.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 1.25 cents per cigarette shall be deposited to the credit of the community health centers special fund; and
  - (D) 1.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234.

The department shall provide an annual accounting of these dispositions to the legislature.”

SECTION 2. Section 304A-2168, Hawaii Revised Statutes, is amended to read as follows:

**“§304A-2168 Hawaii cancer research special fund.** (a) There is established within the state treasury a special fund to be known as the Hawaii cancer research special fund to be administered and expended by the University of Hawaii.

(b) The moneys in the special fund shall be used by the University of Hawaii for the cancer research center of Hawaii’s research and operating expenses[-] and capital expenditures.

(c) The following shall be deposited into the special fund:

- (1) Moneys collected pursuant to section 245-15; [~~and~~]
- (2) All other fees, charges, and other moneys received in conjunction with programs of the cancer research center of Hawaii;
- (3) Transfers from other accounts or funds; and
- (4) Interest earned or accrued on moneys in the special fund.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 20, 2008.)

## ACT 85

H.B. NO. 3126

A Bill for an Act Relating to the Hawaiian Homes Commission Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 215, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

**“§215. Conditions of loans.** Except as otherwise provided in section 213(c), each contract of loan with the lessee or any successor or successors to the lessee’s interest in the tract or with any agricultural, mercantile, or aquacultural cooperative association composed entirely of lessees shall be held subject to the following conditions whether or not stipulated in the contract loan:

- (1) At any one time, the outstanding amount of loans made to any lessee, or successor or successors in interest, for the repair, maintenance, purchase, and erection of a dwelling and related permanent improvements shall not exceed fifty per cent of the maximum single residence loan amount allowed in Hawaii by the United States Department of Housing and Urban Development’s Federal Housing Administration (FHA), for the development and operation of a farm, ranch, or aquaculture operation shall not exceed [~~\$50,000;~~] \$200,000, except that when loans are made to an agricultural or aquacultural cooperative association for the purposes stated in section 214(a)(4), the loan limit shall be determined by the department on the basis of the proposed operations and the available security of the association, and for the development and operation of a mercantile establishment shall not exceed the loan limit determined by the department on the basis of the proposed operations and the available security of the lessee or of the organization formed and controlled by lessees; provided that upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall make the payment provided for by section 209(a), the amount of any such payment shall be considered as part or all, as the case may be, of any such loan to the successor or successors, without limitation as to the above maximum amounts; provided further that in case of the death of a lessee, or cancellation of a lease by the department, or the surrender of a lease by the lessee, the successor or successors to the tract shall assume any outstanding loan or loans thereon, if any, without limitation as to the above maximum amounts but subject to paragraph (3).
- (2) The loans shall be repaid in periodic installments, such installments to be monthly, quarterly, semiannual, or annual as may be determined by the department in each case. The term of any loan shall not exceed thirty years. Payments of any sum in addition to the required installments, or payment of the entire amount of the loan, may be made at any time within the term of the loan. All unpaid balances of principal shall bear

interest at the rate of two and one-half per cent a year for loans made directly from the Hawaiian home loan fund, or at the rate of two and one-half per cent or higher as established by law for other loans, payable periodically or upon demand by the department, as the department may determine. The payment of any installment due shall be postponed in whole or in part by the department for such reasons as it deems good and sufficient and until such later date as it deems advisable. Such postponed payments shall continue to bear interest on the unpaid principal at the rate established for the loan.

- (3) In the case of the death of a lessee the department shall, in any case, permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). In case of the cancellation of a lease by the department or the surrender of a lease by the lessee, the department may, at its option declare all installments upon the loan immediately due and payable, or permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). The department may, in such cases where the successor or successors to the tract assume the contract of loan, waive the payment, wholly or in part, of interest already due and delinquent upon the loan, or postpone the payment of any installment thereon, wholly or in part, until such later dates as it deems advisable. Such postponed payments shall, however, continue to bear interest on the unpaid principal at the rate established for the loan. Further, the department may, if it deems it advisable and for the best interests of the lessees, write off and cancel, wholly or in part, the contract of loan of the deceased lessee, or previous lessee, as the case may be, where such loans are delinquent and deemed uncollectible. Such write off and cancellation shall be made only after an appraisal of all improvements and growing crops or improvements and aquaculture stock, as the case may be, on the tract involved, such appraisal to be made in the manner and as provided for by section 209(a). In every case, the amount of such appraisal, or any part thereof, shall be considered as part or all, as the case may be, of any loan to such successor or successors, subject to paragraph (1).
- (4) No part of the moneys loaned shall be devoted to any purpose other than those for which the loan is made.
- (5) The borrower or the successor to the borrower's interest shall comply with such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the contract of loan.
- (6) The borrower or the successor to the borrower's interest shall comply with the conditions enumerated in section 208, and with section 209 of this Act in respect to the lease of any tract.
- (7) Whenever the department shall determine that a borrower is delinquent in the payment of any indebtedness to the department, it may require such borrower to execute an assignment to it, not to exceed, however, the amount of the total indebtedness of such borrower, including the indebtedness to others the payment of which has been assured by the department of all moneys due or to become due to such borrower by reason of any agreement or contract, collective or otherwise, to which the borrower is a party. Failure to execute such an assignment when requested by the department shall be sufficient ground for cancellation of the borrower's lease or interest therein."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval; provided that the amendments made to section 215, Hawaiian Homes Commission Act, 1920, as amended, by this Act shall not be repealed when Act 107, Session Laws of Hawaii 2000, takes effect with the consent of the United States Congress.

(Approved May 21, 2008.)

## ACT 86

S.B. NO. 3092

A Bill for an Act Relating to Social Security Number.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 501-151, Hawaii Revised Statutes, is amended to read as follows:

**“§501-151 Pending actions, judgments; recording of, notice.** No writ of entry, action for partition, or any action affecting the title to real property or the use and occupation thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the number of certificate of title of the land affected is filed or recorded and registered. Except as otherwise provided, every judgment shall contain or have endorsed on it the [~~social security number,~~] State of Hawaii general excise taxpayer identification number, [~~or~~] the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recording of the judgment. This section does not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration in a probate court; provided that in case notice of the pendency of the action has been duly registered it is sufficient to register the judgment in the action within sixty days after the rendition thereof.

As used in this chapter “judgment” includes an order or decree having the effect of a judgment.

Notice of the pendency of an action in a United States District Court, as well as a court of the State of Hawaii, may be recorded.”

SECTION 2. Section 502-33, Hawaii Revised Statutes, is amended to read as follows:

**“§502-33 Identification of reference to registration of original.** The registrar shall not record any instrument requiring a reference to a prior recorded instrument, unless the same contains a reference to the book and page or document number of the registration of the original recorded instrument or a statement that the original instrument is unrecorded, as the case may be. Except as otherwise provided, every judgment shall contain or have endorsed on it the [~~social security number,~~] State of Hawaii general excise taxpayer identification number, [~~or~~] the federal employer identification number, or the last four digits only of the social security number for



persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon registration of the judgment. No amendment, continuation statement, termination statement, statement of assignment, or statement of release relating to security interests in goods which are or are to become fixtures shall be filed unless it complies with the requirements of part 5 of Article 9 of the Uniform Commercial Code. This section does not apply to any document mentioned herein executed prior to April 13, 1915.”

SECTION 3. Section 504-1, Hawaii Revised Statutes, is amended to read as follows:

“**§504-1 Registration of federal judgments.** Judgments of United States courts may be registered, recorded, docketed, and indexed in the bureau of conveyances or with the assistant registrar of the land court in the same manner as judgments of the courts of the State. Except as otherwise provided, every judgment shall contain or have endorsed on it the [~~social security number,~~] State of Hawaii general excise taxpayer identification number, [~~or~~] the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking the registration, recordation, docketing, or indexing of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration, recordation, docketing, or indexing of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon the registration, recordation, docketing, or indexing of the judgment.”

SECTION 4. Section 636-3, Hawaii Revised Statutes, is amended to read as follows:

“**§636-3 Judgment, orders, decrees; lien when.** Any money judgment, order, or decree of a state court or the United States District Court for the District of Hawaii shall be a lien upon real property when a copy thereof, certified as correct by a clerk of the court where it is entered, is recorded in the bureau of conveyances. No such lien shall continue beyond the length of time the underlying judgment, order, or decree is in force. Except as otherwise provided, every judgment shall contain or have endorsed on it [~~the social security number,~~] the Hawaii tax identification number, [~~or~~] the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment, order, or decree is rendered. If the debtor has no social security number, Hawaii tax identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, order, or decree, the judgment, order, or decree shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking recordation of the judgment.

Failure to disclose or disclosure of an incorrect social security number, Hawaii tax identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recordation of the judgment, order, or decree. When any judgment, order, or decree is fully paid, the creditor or the creditor's attorney of record in the action shall, at the expense of the debtor, execute, acknowledge, and deliver to the debtor a satisfaction thereof, which may be recorded in the bureau. Every satisfaction or assignment of judgment, order, or decree shall contain a reference to the book and page or document number of the registration of the original judgment. The recording fees for a judgment, order, or decree and for each assignment or satisfaction of judgment, order, or decree shall be as provided by section 502-25.

In the case of registered land, section 501-102 and sections 501-241 to 501-248 shall govern.”

SECTION 5. This Act shall not be applied to any judgments, orders, or decrees existing and filed or recorded in the bureau of conveyances or land court as of the effective date of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2008.

(Approved May 21, 2008.)

## ACT 87

H.B. NO. 3150

A Bill for an Act Relating to the Hawaii Emergency Planning and Community Right-To-Know Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to clarify the Emergency Planning and Community Right-to-Know Act reporting requirements.

SECTION 2. Section 128E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The owner or operator of a facility in the [State] state that stores, uses, or manufactures any hazardous substance shall comply with the following requirements:

- (1) Each owner or operator of a facility in the [State] state shall comply with the emergency planning and notification requirements of sections 302 and 303 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 [U.S.C. §§11002 and 11003,] United States Code sections 11002 and 11003, if an extremely hazardous substance is present at the facility in an amount in excess of the threshold planning quantity established for the substance;
- (2) Each owner or operator of a facility in this [State] state that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, as amended, 15 [U.S.C. §651] United States Code Section 651 et seq., and regulations promulgated under that Act, for ~~[all hazardous substances present at the facility in amounts not less than 10,000 pounds, and extremely hazardous substances present at the facility in amounts~~

~~not less than 500 pounds, or the threshold planning quantity for that substance, whichever is less, shall comply with the following reporting requirements]:~~

~~(A) All hazardous substances, except for extremely hazardous substances, present at the facility in amounts not less than ten thousand pounds; and~~

~~(B) All extremely hazardous substances present at the facility in amounts not less than five hundred pounds, or the threshold planning quantity for that substance, whichever is less, shall comply with the following reporting requirements:~~

~~[(A)] (i) Complete a chemical list by March 1 of each year and submit material safety data sheets not more than thirty days after a request;~~

~~[(B)] (ii) Complete the state chemical inventory form by March 1 of each year; provided that a Tier II list shall be used until a state form is available;~~

~~[(C)] (iii) Submit facility diagrams and location area maps by March 1 of each year, and update the maps annually as needed; and~~

~~[(D) Upon request, submit] (iv) Submit emergency response plans required under state or federal law.~~

The ~~[information described]~~ documents required in ~~[subparagraphs (A)] clauses (i) through [(D)] (iv)~~ shall be submitted by March 1 of each year to the commission, the respective committee, and the respective fire department ~~[upon request by the same];~~

(3) Each owner or operator of a facility in this ~~[State]~~ state that is subject to ~~[section]~~ Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 [U.S.C. §11023;] United States Code Section 11023, shall comply with the toxic chemical release form requirements of ~~[section]~~ Section 323 of the Emergency Planning and Community Right-to-Know Act of 1986 by July 1 of each year; and

(4) Each owner or operator of a facility in this ~~[State]~~ state covered under ~~[section]~~ Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 [U.S.C. §11004;] United States Code Section 11004, shall comply with the notification requirements of ~~[section]~~ Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986, and section 128E-7, if a release of an extremely hazardous substance occurs from the facility.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

(Approved May 21, 2008.)

A Bill for an Act Relating to the First-To-Work Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 346, part XI, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]PART XI.[H] [JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) PROGRAM] FIRST-TO-WORK PROGRAM~~

~~[H]§346-261[H] [JOBS;] **First-To-Work; establishment; purpose.** There is established a mandatory work program for certain applicants and recipients of [aid to families with dependent children (AFDC)] temporary assistance for needy families and temporary assistance for other needy families consistent with federal regulations and requirements under [Title IV F of the Social Security Act, Public Law 100-485.] Title IV-A of the Social Security Act, 42 United States Code Section 601 et seq. The purposes of the [job opportunities and basic skills (JOBS)] first-to-work program shall be to encourage, assist, and require [AFDC] temporary assistance for needy families and temporary assistance for other needy families applicants and recipients to fulfill their responsibilities to support their children by preparing for, accepting, and retaining employment. [To assure that needy individuals or families are provided the means to avoid long-term welfare dependency, JOBS is intended to:~~

- ~~(1) Provide individuals with the opportunity to acquire the basic education and skills necessary to qualify for employment;~~
- ~~(2) Provide necessary supportive services, including but not limited to transitional child care and medical assistance, so that recipients can participate in the work program and accept employment; and~~
- ~~(3) Coordinate job services at all levels of government to facilitate access to a wide range of services and maximize the use of existing resources.]~~

~~The department shall adopt rules consistent with the requirements of Title IV-A of the Social Security Act, 42 United States Code Section 601 et seq., and in accordance with chapter 91 for the purposes of this part.~~

~~[§346-262] **Eligible participants; priority target groups.** (a) All applicants for and recipients of AFDC shall be required to register and participate in the program; provided that exemptions consistent with federal requirements are applied.~~

~~(b) The priority target groups under the JOBS program may include individuals who:~~

- ~~(1) Are receiving AFDC and have received such aid for any thirty-six of the preceding sixty months;~~
- ~~(2) Are applying for AFDC and have received such aid for any thirty-six of the sixty months immediately preceding the most recent month for which application has been made;~~
- ~~(3) Are custodial parents under the age of twenty-four years;~~
- ~~(4) Are members of a family in which the youngest child is within two years of being ineligible for AFDC because of age.~~

~~(e) Exempt applicants for and recipients of AFDC and state funded public assistance programs may volunteer to participate in the program.~~

~~(d) The department shall not be required to provide services to all eligible participants, if necessary resources are not available, provided that:~~

- ~~(1) Participants not offered specific services due to lack of resources shall be placed on inactive status until these services are available; and~~
- ~~(2) Any participant placed on inactive status due to lack of resources shall not incur any negative sanctions as a result of that placement.~~

~~(e) The department may establish quotas for the target groups under this program to reflect the priorities of this section.~~

~~[§346-263] **Program components.** The activities and components of the JOBS program may include, but are not limited to the following:~~

- ~~(1) Assessment and identification of barriers to participation;~~
- ~~(2) Development of a supportive service plan to remove barriers;~~

- (3) Employability planning, including career path development;
- (4) Basic and higher education, including remedial education and English proficiency to help participants become job ready<sup>1</sup>;
- (5) Job skills training;
- (6) Job readiness and job search;
- (7) Job placement activities and services;
- (8) Work maturity;
- (9) Work/study<sup>1</sup> and
- (10) Work experience and community work experience program (CWEP).

**[§346-264] Assessment.** An initial assessment of each participant shall determine priority for participation in JOBS. A comprehensive assessment may follow to determine barriers to participation in the program and may include, but is not limited to:

- (1) A review of the family circumstances to identify social and health problems and needs; and
- (2) Identification of child care, transportation, and other supportive services needs.

**[§346-265] Support service plan.** Where barriers have been identified during the assessment phase, the department, in consultation with the participant, shall develop a supportive service plan describing services or tasks to be completed for removing or controlling barriers which constrain participation in employment, training, or education.

**[§346-266] Employability planning.** Under this component, the department shall assess the participant's skills, knowledge, capability, and capacity for permanent employment in general and in specific professions, occupations, or vocations; offer guidance and counseling to establish career goals and develop career paths; and, with the assistance and agreement of the participant, establish and approve a specific employability plan which may include job placement, job training, and education.

**[§346-267] Case management.** The department may provide to a participant case management services to support and strengthen the participant's capacity to become self-supporting and to facilitate access to resources and opportunities required for self support. Case management activities may include, but are not limited to:

- (1) Facilitating activities and services needed by a recipient who is working toward the goal of self-sufficiency;
- (2) Assisting the individual and the family to obtain services needed to assure effective participation in the program;
- (3) Facilitating communication between the participant and service providers;
- (4) Providing initial support, assessment, and referral to appropriate services; and
- (5) Monitoring the participant's program participation progress to ensure that the individual receives required assistance in a timely and effective manner.

**[§346-268] Child care.** The department may provide child care services to eligible families to allow participation in education, training, and employment in accordance with federal regulations and requirements; provided that the department:

- (1) Shall ensure that care arrangements for children meet applicable standards of state law; and

- (2) May pay for child care services up to the amount consistent with the department's payment standard.

~~§346-269] Transportation assistance.~~ (a) The department may provide transportation assistance that is necessary to enable an individual to participate in the JOBS program. The assistance may include the cost of transportation of the participant and participant's child, if necessary.

(b) The determination of whether the transportation services to be used are necessary and economical shall be the decision of the department upon consultation with the participant.

(c) Transportation assistance may be provided through bus passes, mileage reimbursements equivalent to the public employees' contract negotiations, and other appropriate means of transportation to be determined by the department with the involvement and agreement of the participant.

(d) The department may provide assistance with air fare cost, on a limited basis and as funds permit, to eligible individuals living on Molokai, Lanai, and West Hawaii to travel to another island to receive appropriate training not available in these locations. Assistance with this cost shall be based on the individual's employability plan and availability of employment in the individual's place of residence.

~~§346-270] Other support services.~~ The department may provide other supportive services, such as counseling for personal and family-related problems, and for one-time training and work-related expenses, to allow eligible individuals to participate in education, training, and employment. The department may:

- (1) Provide health and social services to eligible individuals and families with identified needs to assist them in removing or controlling any barriers to successful participation in the program.
- (2) Establish separate emergency funds to meet the one-time training and work-related expenses necessary to allow individuals to participate in the program. The items to be paid for by the emergency fund may include, but are not limited to, initial work clothing, work tools, safety equipment, dental and medical procedures not covered under the medical assistance program, rental and utility deposits not available through the welfare grant, and limited assistance with auto repairs.

~~§346-271] Incentive benefits.~~ The department may provide incentive benefits for recipients who work full time under an employability plan by providing supplemental benefits up to one hundred per cent of the poverty standard.

~~§346-272] Transitional benefits.~~ The department may provide transitional child care and medical benefits to those families whose eligibility for AFDC has been discontinued due to employment. Transitional assistance shall be provided in accordance with federal regulations and requirements, and shall be arranged and developed with the involvement and approval of the participant.

~~§346-273] Coordination.~~ The department shall coordinate the JOBS program with education, employment, health, and other related services programs to assist participants in becoming self-sufficient.

~~§346-274] Contracts.~~ The department may contract with a public agency or private nonprofit organization to administer all or portions of this part in accordance with federal regulations and in accordance with chapter 42D.

~~§346-275] Rules. The department shall adopt rules consistent with federal JOBS program requirements and in accordance with chapter 91 for the purposes of this part.~~

~~§346-276] Duties. The department shall monitor and evaluate the JOBS program, and shall, among other analyses, identify factors that facilitate or make difficult the implementation of this [part]. The department shall also assess the impact of the program with regard to encouraging AFDC recipients in finding employment and avoiding long-term welfare dependency. The department shall collect and provide all data relevant to its assessment.~~

~~The department shall submit annual status reports on its findings to the legislature prior to the convening of the regular session of each year, starting with the regular session of 1991.]”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 21, 2008.)

**Note**

- 1. So in original.

**ACT 89**

H.B. NO. 1755

A Bill for an Act Relating to the General Excise Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 237-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) “Wholesaler” or “jobber” applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
- (3) Sales to a licensed producer or cooperative association of materials or commodities that are to be incorporated by the producer or by the cooperative association into a finished or saleable product that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities that are sold by the producer or by the cooperative association;
- (4) Sales to a licensed contractor, of materials or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in such finished work or project in such form as to be perceptible to the senses;
- (5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs,

semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

- (6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed or seedstock for producing agricultural and aquacultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural and aquacultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);
  - (7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural and aquacultural products; of seedlings and cuttings for producing nursery plants or aquacultural products; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);
  - (8) Sales of tangible personal property:
    - (A) To a licensed seller engaged in a service business or calling; provided that:
      - (i) The property is not consumed or incidental to the performance of the services;
      - (ii) There is a resale of the article at the retail rate of four per cent; and
      - (iii) The resale of the article is separately charged or billed by the person rendering the services;
    - (B) Where:
      - (i) Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling, or upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;
      - (ii) The tangible personal property becomes or is used as an identifiable element of the service rendered; and
      - (iii) The cost of the tangible personal property does not constitute overhead to the licensed seller;
- the sale shall be subject to section 237-13.3; or



- (C) Where the taxpayer is subject to both subparagraphs (A) and (B), then the taxpayer shall be taxed under subparagraph (A). Subparagraphs (A) and (C) shall be repealed on January 1, 2006;
- (9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;
- (10) Sales of services to a licensed seller engaging in a business or calling whenever:
  - (A) Either:
    - (i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling[;], including a dealer's furnishing of goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property;
    - (ii) In the context of a service-to-tangible personal property transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, or preparing tangible personal property to be sold;
    - (iii) In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor; or
    - (iv) In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;
  - (B) The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations;
  - (C) The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations;
  - (D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, contractor, or person furnishing transient accommodations for imposition of the tax under this chapter;
  - (E) The gross income of the licensed seller is not subject to a deduction under this chapter or chapter 237D; and
  - (F) The resale of the service, tangible personal property, contracting, or transient accommodations is subject to the tax imposed under this chapter at the highest tax rate.

Sales subject to this paragraph shall be subject to section 237-13.3;

- (11) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments that are provided to customers by the licensed retail merchant, jobber, or other licensed seller;
- (12) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market

- (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller;
- (13) Sales of amusements subject to taxation under section 237-13(4) to a licensed seller engaging in a business or calling whenever:
- (A) Either:
- (i) In the context of an amusement-to-service transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;
  - (ii) In the context of an amusement-to-tangible personal property transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of selling tangible personal property; or
  - (iii) In the context of an amusement-to-amusement transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another amusement in the course of the person's amusement business;
- (B) The benefit of the amusement passes to the customer of the licensed seller as an identifiable element of the other service, tangible personal property to be sold, or amusement;
- (C) The cost of the amusement does not constitute overhead to the licensed seller;
- (D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, person furnishing transient accommodations, or person rendering an amusement for imposition of the tax under chapter 237;
- (E) The gross income of the licensed seller is not subject to a deduction under this chapter; and
- (F) The resale of the service, tangible personal property, or amusement is subject to the tax imposed under this chapter at the highest rate.

As used in this paragraph, "amusement" means entertainment provided as part of a show for which there is an admission charge. Sales subject to this paragraph shall be subject to section 237-13.3; and

- (14) Sales by a printer to a publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2008.

(Approved May 21, 2008.)

A Bill for an Act Relating to the Definition of Renewable Energy Producer.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 102, Session Laws of Hawaii 2002, relating to leasing of public lands for renewable energy purposes, authorized the board of land and natural resources to lease public lands to renewable energy producers through direct negotiation. The intent of Act 102, Session Laws of Hawaii 2002, was to encourage the development of renewable energy projects and to reduce the State's dependency on fossil fuels.

The inclusion of biofuels in the definition of renewable energy recognized the value of this important renewable energy technology. The current law, however, does not take into consideration that, unlike other renewable energy technologies, biofuel production does not require its fuel production facilities to be located at the same location as the energy source. In fact, due to generally different requirements for industrial and agricultural zoned districts, it is often advantageous to separate biofuel production facilities from the sources of its feedstock. The growing and production of the plant and animal materials that constitute the feedstock for biofuel production is an inseparable part of that production process.

Accordingly, the legislature finds that, as an integral part of the production of biofuels as a renewable energy source, growers and producers of plant or animal materials used primarily for the production of biofuels or other fuels should be allowed to lease public lands through direct negotiation.

The purpose of this Act is to amend the definition of "renewable energy producer" under section 171-95, Hawaii Revised Statutes, to include growers and producers of plant or animal materials used primarily for the production of biofuels or other fuels, so that they will be eligible for direct leases of public land.

SECTION 2. Section 171-95, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) For the purposes of this section, "renewable energy producer" means [any]:

- (1) Any producer of electrical or thermal energy produced by wind, solar energy, hydropower, landfill gas, waste-to-energy, ocean thermal energy conversion, cold seawater, wave energy, biomass, including municipal solid waste, biofuels or fuels derived from organic sources, hydrogen fuels derived primarily from renewable energy, or fuel cells where the fuel is derived primarily from renewable sources that sell all of the net power produced from the demised premises to an electric utility company regulated under chapter 269 or that sells all of the thermal energy it produces to customers of district cooling systems~~[-Up]~~; provided that up to twenty-five per cent of the power produced by a renewable energy producer and sold to the utility or to district cooling system customers may be derived from fossil fuels[-]; or
- (2) Any grower or producer of plant or animal materials used primarily for the production of biofuels or other fuels; provided that nothing herein is intended to prevent the waste product or byproduct of the plant or animal material grown or produced for the production of biofuel, other fuels, electrical energy, or thermal energy, from being used for other useful purposes."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 21, 2008.)

## ACT 91

H.B. NO. 2589

A Bill for an Act Relating to Scrap Metal.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that copper theft continues to be a serious problem, inasmuch as copper thieves illegally traffic in stolen copper as a ready source of cash. Discouraging copper thieves from selling stolen copper to scrap dealers would reduce the incidence of copper theft.

The purpose of this Act is to require scrap dealers and recyclers to:

- (1) Pay for copper by check;
- (2) Issue the check payable to the name of the seller; and
- (3) Mail the check to the address shown on the identification of the seller, or arrange for a personal pick-up of the check.

SECTION 2. Chapter 445, Hawaii Revised Statutes, is amended by adding a new section to part X to be appropriately designated and to read as follows:

**“§445- Payment of copper purchased by scrap dealer or recycler; check; mailing.** (a) If the scrap dealer or recycler, as applicable, purchases any copper, payment for the copper shall be made by check payable to the seller. At the time of sale of the copper, the seller shall present to the scrap dealer or recycler a valid photo identification card or license of the seller issued by a federal or state government agency authorized to issue valid identification. The check may be mailed to the address shown on the identification, or the scrap dealer or recycler may arrange for the check to be picked up personally by the seller at the place of business of the scrap dealer or recycler.

(b) As used in this section, “recycler” means a person who is engaged in the business of recycling, as defined in section 342G-1.”

SECTION 3. Section 445-235, Hawaii Revised Statutes, is amended to read as follows:

**“§445-235 Prohibitions; penalty.** Any person who violates sections 445-232 [and], 445-233, or 445-\_\_\_\_, or any person who falsifies a statement required by section 445-233, shall be guilty of a misdemeanor and shall be sentenced in accordance with chapter 706, except that the court shall impose a minimum sentence of:

- (1) A fine of \$1,000 for the first offense;
- (2) A fine of \$3,000 for the second offense; and
- (3) A fine of \$5,000 and the suspension of the scrap dealer’s license for a period of six months for the third or subsequent offense; provided that if the third or subsequent offense occurs within a five-year period from the occurrence of two prior offenses, the scrap dealer shall be subject to license revocation.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

**ACT 92**

SECTION 5. This Act shall take effect on July 1, 2008; provided that the amendment made to section 445-235, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2009, by Act 197, Session Laws of Hawaii 2007.

(Approved May 22, 2008.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.

**ACT 92**

H.B. NO. 1365

A Bill for an Act Relating to the State of Hawaii Deferred Compensation Plans.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The State of Hawaii deferred compensation plan (“plan”) was established under chapter 88E, Hawaii Revised Statutes, in or around 1983 to allow state and participating county employees who are members of the employees’ retirement system to defer all or part of their compensation on a tax-deferred basis into the plan. The plan’s board of trustees oversees the plan and selects the investment products that are offered to participants. Participants then voluntarily invest their deferred compensation in these investment products.

The plan for part-time, temporary, and seasonal or casual employees was established under chapter 88F, Hawaii Revised Statutes, in or around 1997, and requires all part-time, temporary, and seasonal or casual employees who are not members of the employees’ retirement system to contribute seven and five-tenths per cent of their compensation on a tax-deferred basis into this plan in lieu of social security contributions. The board also oversees this plan and selects the investment products that are offered to participants. Because there is currently only one investment product offered in this plan, the mandatory participant contributions are all deposited into this investment product.

Since the inception of both plans, the securities industry has been constantly changing. New types of investment products are being created and offered to the public.

Although the current wording in sections 88E-9 and 88F-7, Hawaii Revised Statutes, is broad, these sections are being amended to make it clear that any other type of investment product that is commonly offered in the securities industry or other deferred compensation plans may be selected and offered in the plans (e.g., stocks, bonds, commingled group trusts, and separate accounts). These amendments are necessary to more clearly provide the board with sufficient authority to keep pace with the ever-changing securities industry, and to select and offer the best investment products to participants of both plans.

SECTION 2. Section 88E-9, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§88E-9~~ **Investments.** (a) The board may create a trust or other special funds for the segregation of funds or assets resulting from compensation deferred and for the administration of the plan. ~~[Funds held by the board pursuant to a plan established under this chapter]~~

(b) Participating employees shall [be invested in accordance with] invest their deferred compensation in the investment products permitted under the plan; provided that [any investment contract entered into shall be made with] the invest-

ment products shall be provided by companies [authorized and] that are licensed to [do] provide investment products and transact business in the State. [Investment]

(c) The investment products [shall be limited to] may include annuities, life insurance, savings accounts, mutual funds, or [any combination thereof which] other types of investment products that are commonly offered in the securities industry or other deferred compensation plans and are determined by the board to be reasonably prudent investment products.

(d) The investment products shall have been reviewed and selected by the board after a competitive bidding process based on the specifications and considerations deemed appropriate by the board.

(e) The investments and investment products shall not be construed to be a prohibited use of general assets of the State.

(f) Nothing in this chapter shall be construed to permit any type of investment prohibited by law.”

SECTION 3. Section 88F-7, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§88F-7[H] Investments. (a) The board may create a trust or other special funds for the segregation of funds or assets resulting from compensation deferred and for the administration of the plan. [Funds held by the board pursuant to a plan established under this chapter]~~

~~(b) Participating employees shall [be invested in accordance with] invest their deferred compensation in the investment products permitted under the plan; provided that [any investment contract entered into shall be made with] the investment products shall be provided by companies [authorized and] that are licensed to [do] provide investment products and transact business in the State. [Investment]~~

~~(c) The investment products [shall be limited to] may include annuities, life insurance, savings accounts, mutual funds, or [any combination thereof which] other types of investment products that are commonly offered in the securities industry or other deferred compensation plans and are determined by the board to be reasonably prudent investment products.~~

~~(d) The investment products shall have been reviewed and selected by the board after a competitive bidding process based on the specifications and considerations deemed appropriate by the board. [Investment]~~

~~(e) The investment products [must] shall guarantee a full return of principal.~~

~~(f) The investments and investment products shall not be construed to be a prohibited use of general assets of the State.~~

~~(g) Nothing in this chapter shall be construed to permit any type of investment prohibited by law.”~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2008.

(Approved May 22, 2008.)

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For all taxable years beginning after December 31, [2006,] 2007, as used in this chapter, “Internal Revenue Code” means subtitle A, chapter 1, of the federal Internal Revenue Code of 1986, as amended as of December 31, [2006,] 2007, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income, except those provisions of the Internal Revenue Code and federal public laws which, pursuant to this chapter, do not apply or are otherwise limited in application and except for the provisions of Public Law 109-001 which apply to section 170 of the Internal Revenue Code. The provisions of Public Law 109-001 to accelerate the deduction for charitable cash contributions for the relief of victims of the 2004 Indian Ocean tsunami are applicable for the calendar year that ended December 31, 2004, and the calendar year ending December 31, 2005.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

- (1) The basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and
- (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.”

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Section 179 (with respect to the election to expense certain depreciable business assets) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to:

- (1) The increase of the maximum deduction to \$100,000 for taxable years beginning after 2002 and before 2008, and the increase of the maximum deduction to \$125,000 for taxable years beginning after 2006 and before 2011, in section 179(b)(1);
- (2) The increase of the qualifying investment amount to \$400,000 for taxable years beginning after 2002 and before 2008, and the increase of the qualifying investment amount to \$500,000 for taxable years beginning after 2006 and before 2011, in section 179(b)(2);
- (3) Defining section 179 property to include computer software in section 179(d)(1);
- (4) Inflation adjustments in section 179(b)(5); and
- (5) Irrevocable election in section 179(c)(2);

shall not be operative for the purposes of this chapter.”

SECTION 3. Section 235-2.45, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Section 1400N (with respect to tax benefits for Gulf Opportunity Zone) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that sections 1400N(a) (with respect to tax-exempt bond financing); 1400N(b) (with respect to advance refundings of certain tax-exempt bonds); 1400N(c) (with

respect to the low income housing credit); 1400N(d) (with respect to special allowance for certain property acquired on or after August 28, 2005); 1400N(e) (with respect to increase in expensing under section 179); 1400N(h) (with respect to increase in rehabilitation credit); 1400N(l) (with respect to credit to holders of Gulf tax credit bonds); 1400N(m) (with respect to application of new markets tax credit to investments in community development entities serving Gulf Opportunity Zone); 1400N(n) (with respect to treatment of representations regarding income eligibility for purposes of qualified residential rental project requirements) shall not be operative for purposes of this chapter.”

SECTION 4. Section 235-2.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Reference in provisions of the Internal Revenue Code which are operative in this State to provisions in the Internal Revenue Code which are not operative in this State shall be considered inoperative for the purposes of determining gross income, adjusted gross income, ordinary income and loss, and taxable income; provided that:

- (1) References to time limits and other administrative provisions in subtitle F (sections 6001 to 7873) of the Internal Revenue Code contained in operative sections of the Internal Revenue Code shall be deemed references to applicable provisions of this chapter or chapter 231 or 232, and in the absence of applicable provisions in this chapter or chapter 231 or 232, then to rules adopted by the director of taxation under subsection (b);
- (2) If inoperative provisions of the Internal Revenue Code have been codified in this chapter such references shall be deemed references to the codified provisions in this chapter. Transitory and savings provisions in federal Public Laws amending sections of the Internal Revenue Code operative in this chapter shall be operative for the purposes of this chapter. Provisions in this chapter or chapter 231 or 232 in conflict with the Internal Revenue Code or transitory or savings provisions in federal Public Law shall control; and
- (3) Retroactive and prospective provisions in federal Public Laws amending sections of the federal Internal Revenue Code operative in this chapter affecting taxable years beginning or ending before the December 31 date in section 235-2.3 shall be operative for the purposes of this chapter; provided that the effective dates in Public Law 96-471 placing it in effect for the taxable year 1980 shall be operative for the purposes of this chapter.”

SECTION 5. Section 235-55.91, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For purposes of this section:

“Hiring date” means the day the vocational rehabilitation referral is hired by the employer.

“Qualified first-year wages” means, with respect to any vocational rehabilitation referral, qualified wages attributable to service rendered during the one-year period beginning with the day the individual begins work for the employer.

“Qualified wages” means the wages paid or incurred by the employer during the taxable year to an individual who is a vocational rehabilitation referral and more than one-half of the wages paid or incurred for such an individual is for services performed in a trade or business of the employer.

“Vocational rehabilitation referral” means any individual who is certified by the department of human services vocational rehabilitation and services for the blind



division in consultation with the Hawaii state employment service of the department of labor and industrial relations as:

- (1) Having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment; and
- (2) Having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to:
  - (A) An individualized written rehabilitation plan under the State’s plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, as amended; [øf]
  - (B) A program of vocational rehabilitation carried out under chapter 31 of [~~title~~] Title 38, United States Code[-]; or
  - (C) An individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act, as amended, with respect to which the requirements of such subsection are met.

“Wages” has the meaning given to such term by section 3306(b) of the Internal Revenue Code (determined without regard to any dollar limitation contained in the Internal Revenue Code section). “Wages” shall not include:

- (1) Amounts paid or incurred by an employer for any period to any vocational rehabilitation referral for whom the employer receives state or federally funded payments for on-the-job training of the individual for the period;
- (2) Amounts paid to an employer (however utilized by the employer) for any vocational rehabilitation referral under a program established under section 414 of the Social Security Act; and
- (3) If the principal place of employment is at a plant or facility, and there is a strike or lockout involving vocational rehabilitation referrals at the plant or facility, amounts paid or incurred by the employer to the vocational rehabilitation referral for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of strike or lockout.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2007; provided that the retroactive and prospective effective dates contained in the congressional acts relating to the Internal Revenue Code and enacted during 2007 shall be operative for chapter 235, Hawaii Revised Statutes.

(Approved May 22, 2008.)

**ACT 94**

S.B. NO. 788

A Bill for an Act Relating to Disaster Relief.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 118, Session Laws of Hawaii 2006, as amended by Act 89, Session Laws of Hawaii 2007, is amended by amending section 26 to read as follows:

“SECTION 26. Any provision of this Act to the contrary notwithstanding, the appropriations authorized under this Act shall not lapse at the end of the fiscal year for which the appropriations were made. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, [2008,] 2009, shall lapse.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2008.

(Approved May 22, 2008.)

## ACT 95

S.B. NO. 2784

A Bill for an Act Relating to the Power of Arrest.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 803, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§803- United States marshal or deputy United States marshal; arrest powers.** A United States marshal or deputy United States marshal, without a warrant, may arrest a person if:

- (1) The marshal or deputy marshal is on duty;
- (2) One or more of the following situations exists:
  - (A) The person commits an assault or other crime involving physical harm, defined and punishable under chapter 707, against the marshal or deputy marshal or against any other person in the presence of the marshal or deputy marshal;
  - (B) The marshal or deputy marshal has probable cause to believe that a crime as provided in subparagraph (A) has been committed and has probable cause to believe that the person to be arrested has committed the crime; or
  - (C) The marshal or deputy marshal has received information by written, telegraphic, telephonic, radio, or other authoritative source that a law enforcement officer holds a warrant for the person’s arrest; and
- (3) The head of the Hawaii district office for the United States Marshal Service certifies to the State that the marshal or deputy marshal has received proper training within the agency to enable that officer to enforce or administer this section.”

SECTION 2. Section 803-16, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§803-16]]~~ Officer of United States Customs and Border Protection Service or Citizenship and Immigration [and Naturalization Service;] Services; arrest powers. An officer of the United States Customs and Border Protection Service ~~[and]~~ or the Citizenship and Immigration [and Naturalization Service may,] Services, without a warrant, may arrest a person if:**

- (1) The officer is on duty;
- (2) One or more of the following situations exists:

- (A) The person commits an assault or other crime involving physical harm, defined and punishable under chapter 707, against the officer or against any other person in the presence of the officer;
  - (B) The person commits an offense against public order, defined and punishable under chapter 711, in the presence of the officer;
  - (C) The officer has probable cause to believe that a crime as ~~defined~~ provided in subparagraph (A) or (B) has been committed and has probable cause to believe that the person to be arrested has committed the crime;
  - (D) The officer has probable cause to believe that a felony has been committed and probable cause to believe that the person to be arrested has committed the felony; or
  - (E) The officer has received information by written, telegraphic, teletypic, telephonic, radio, or other authoritative source that a law enforcement officer holds a warrant for the person's arrest; ~~and~~ and
- (3) The ~~Regional Commissioner~~ Director of the Hawaii district office for the Customs and Border Protection Service, or the ~~Regional Commissioner of~~ Citizenship and Immigration ~~[and Naturalization]~~, as the case may be, ~~[for the district of Hawaii]~~ certifies to the State that the officer has received proper training within the agency to enable that officer to enforce or administer this section."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 22, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.

**ACT 96**

H.B. NO. 3173

A Bill for an Act Relating to Grounded Vessels.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 200-47.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Solely for the purposes of removal and with no liability to the department, the department may assume control of any vessel that:

- (1) Is grounded on a coral reef or in imminent danger of breaking up; and
- (2) Cannot be immediately removed by the owner within seventy-two hours in a manner that is reasonably safe, as determined by the department.

Once the department assumes control over the vessel, the vessel shall be ~~[directed to a safer location]~~ removed by conventional salvage methods to minimize damage to the natural resources and not become a hazard to navigation. All costs and expenses of removing the vessel and ~~[damages]~~ damage to state or private property shall be the sole responsibility of the vessel's owner or operator. This section shall apply whether the vessel is attended or deemed derelict under section 200-48."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 22, 2008.)

## ACT 97

H.B. NO. 2965

A Bill for an Act Relating to Agricultural Water Security.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In accordance with the strategic plan developed by the United States Department of Agriculture, the legislature finds that agricultural water security is essential to maintain public health and well-being; ensure future cultivation of food, fiber, and energy crops; and enhance rural recreation and community aesthetics. On October 15, 2006, the Kiholo earthquake caused considerable damage to irrigation systems in the Waimea and Hamakua areas on the island of Hawaii, causing the agricultural water users to depend on ground water to supply water to the ditch systems and incurring costs for the transmission of water and energy to run pumps.

On October 15, 2006, the governor proclaimed these areas to be disaster areas and directed government agencies to take such action and employ such measures for water supply and other emergency functions as necessary. Furthermore, the governor's proclamation suspended statutes, including those relating to procurement, public lands management, water development, the state water code, and public utilities. These emergency measures are to continue until an appropriate time for termination is determined by the governor.

The legislature further finds that agricultural water systems are critical for agricultural production and that measures should be implemented to allow appropriate responses to conditions caused by natural disasters such as earthquakes.

The purpose of this Act is to ensure the security of the agricultural water supply by authorizing emergency measures to be taken in response to damages caused by natural disasters, such as the damage to the Waimea and Hamakua agricultural water systems.

SECTION 2. Chapter 209, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§209- Agricultural water systems; emergency power.** When the governor has declared that a disaster has occurred for any portion of the State, pursuant to section 209-2, which results in damage to an agricultural water system that necessitates the temporary use of electrical power or backup generators to pump ground water for irrigation until the system can be repaired, the person who controls, operates, or manages the system may negotiate an agreement for the production of emergency power for the agricultural water system. The agreement shall terminate when the governor determines that the disaster emergency relief period is terminated.

If the negotiated agreement is with an independent power producer that is not currently regulated by the public utilities commission, the execution of the agreement shall not cause the independent power producer to become subject to the jurisdiction of the public utilities commission.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.  
(Approved May 22, 2008.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 98

S.B. NO. 1802

A Bill for an Act Relating to Mental Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 334-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“Health care operations” means the services and activities conducted by an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide medical or health services in the ordinary course of business, including case management and care coordination, quality assessment and improvement activities, medical reviews, and administrative activities.

“Health care provider” means an individual or entity licensed, certified, or otherwise authorized or permitted by law to provide medical or health services in the ordinary course of business or practice of a profession.

“Treatment summary” means a record of information including present history and physical examination, mental status examination, emergency department record, intake evaluation, eligibility determination, current medication list and prescription history, treatment plan, consultant reports, diagnosis and problem lists, recent laboratory and diagnostic testing, clinical or discharge summaries, and discharge instructions, or any combination of such information.”

SECTION 2. Section 334-5, Hawaii Revised Statutes, is amended to read as follows:

**“§334-5 Confidentiality of records.** All certificates, applications, records, and reports made for the purposes of this chapter and directly or indirectly identifying a person subject hereto shall be kept confidential and shall not be disclosed by any person except so far as:

- (1) ~~[as the]~~ The person identified, or the person’s legal guardian, consents~~[-or]~~;
- (2) ~~[as disclosure]~~ Disclosure may be deemed necessary by the director of health or by the administrator of a private psychiatric or special treatment facility to carry out this chapter~~[-or]~~;
- (3) ~~[as a]~~ A court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure would be contrary to the public interest~~[-or]~~;
- (4) ~~[as disclosure]~~ Disclosure may be deemed necessary under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Law 99-319, to protect and advocate the rights of persons with mental illness who reside in facilities providing treatment or care~~[-or]~~;
- (5) Disclosure of a person’s treatment summary from a previous five-year period from one health care provider to another may be deemed necessary for the purpose of continued care and treatment of the person, or for health care operations; provided that the health care provider seeking disclosure makes reasonable efforts to obtain advance consent from the person; or

- (6) ~~[as disclosure is]~~ Disclosures are made ~~[to]~~ between the person's health care ~~[insurer]~~ provider and payor to obtain reimbursement for services rendered to the person~~], except for records subject to Title 42 Code of Federal Regulations Part 2, confidentiality of alcohol and drug abuse patient records~~; provided that disclosure shall be made only if the provider informs the person that a reimbursement claim will be made to the person's ~~[insurer,]~~ payor, the person is afforded an opportunity to pay the reimbursement<sup>1</sup> directly, and the person does not pay.

Nothing in this section shall preclude the application of more restrictive rules of confidentiality set forth for records covered by Title 42, Part 2, Code of Federal Regulations, relating to the confidentiality of alcohol and drug abuse patient records. For the purposes of this section, "facilities" shall include~~;~~ but not be limited to~~;~~ hospitals, nursing homes, community facilities for mentally ill individuals, boarding homes, and care homes.

Nothing in this section shall preclude disclosure, upon proper inquiry, of any information relating to a particular patient and not clearly adverse to the interests of the patient, to the patient, the patient's family, legal guardian, or relatives, nor, except as provided above, affect the application of any other rule or statute of confidentiality. The use of the information disclosed shall be limited to the purpose for which the information was furnished."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

(Approved May 23, 2008.)

#### Note

1. Prior to amendment "claim" appeared here.

## ACT 99

S.B. NO. 3069

A Bill for an Act Relating to Records of Defendants Committed to a Hospital Controlled by the Director of Health or to Custody of Director of Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 704-404, Hawaii Revised Statutes, is amended by amending subsection (8) to read as follows:

"(8) The court shall obtain all existing~~;~~ medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statutes, and make such records available for inspection by the examiners. If, pursuant to this section, the court orders the defendant committed to a hospital or other suitable facility under the control of the director of health, then the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant which have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of plea of guilty or no contest made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the

case of a juvenile, or records containing data from the United States National Crime Information Center. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with its investigation, or who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law.”

SECTION 2. Section 704-406, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in section 704-407, and the court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. If the court is satisfied that the defendant may be released on condition without danger to the defendant or to the person or property of others, the court shall order the defendant’s release, which shall continue at the discretion of the court on conditions the court determines necessary. A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions. When the defendant is committed to the custody of the director of health for detention, care, and treatment, the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant which have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or no contest made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with the investigation of who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law.”

SECTION 3. Section 704-411, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court, on the basis of the report made pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall make an order as follows:

(a) The court shall order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant:

- (i) Is affected by a physical or mental disease, disorder, or defect;
- (ii) Presents a risk of danger to self or others; and
- (iii) Is not a proper subject for conditional release;

provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant’s treatment needs and the need to prevent harm to the person confined and others[;]. The county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant which have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquit-

tal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or no contest made pursuant to chapter 853, so long as the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with the investigation of who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law;

- (b) The court shall order the defendant to be released on such conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition; or
- (c) The court shall order the defendant discharged if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect or, if so affected, that the defendant no longer presents a danger to self or others and is not in need of care, supervision, or treatment.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 23, 2008.)

## ACT 100

S.B. NO. 2396

A Bill for an Act Relating to Mental Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. Senate Concurrent Resolution No. 117, S.D. 1, H.D. 1, adopted by the twenty-third Hawaii state legislature in 2006 called for the governor to convene a task force to “evaluate and recommend possible procedural, statutory, and public policy changes to minimize the census at Hawaii State Hospital and promote community based health services for forensic patients.” The purpose of this part is to enact the recommendations made by that task force.

SECTION 2. Chapter 334, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§334- Annual report; forensic patient data.** The department of health shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session which, at a minimum, shall summarize yearly data on forensic patients, including:



- (1) Gross numbers for admissions to and discharges from the Hawaii state hospital;
- (2) The number of admissions to, discharges from, and lengths of stays in the Hawaii state hospital, broken down by the following commitment categories:
  - (A) Original order under section 704-411(1)(a);
  - (B) Pending examination under section 704-411(3);
  - (C) Maximum seventy-two-hour recommitment pending examination under section 704-413(1);
  - (D) Original order under section 704-404; and
  - (E) Original order under section 704-406;
- (3) Number of persons committed to the Hawaii state hospital by each court and county;
- (4) Gross lengths of stay in the Hawaii state hospital for:
  - (A) Patients discharged during the fiscal year; and
  - (B) Individuals remaining as inpatients at the end of the fiscal year; and
- (5) Number of patients in the Hawaii state hospital on forensic status, broken down by categories of underlying crimes, such as by crimes against the person, sex offenses, and property crimes, and by grade of offense.”

SECTION 3. Section 704-411, Hawaii Revised Statutes, is amended to read as follows:

**“§704-411 Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing.** (1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court, on the basis of the report made pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall make an order as follows:

- (a) The court shall order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant:
  - (i) Is affected by a physical or mental disease, disorder, or defect;
  - (ii) Presents a risk of danger to self or others; and
  - (iii) Is not a proper subject for conditional release;
 provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant’s treatment needs and the need to prevent harm to the person confined and others;
- (b) The court shall order the defendant to be ~~[released on such conditions]~~ granted conditional release with conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition; or
- (c) The court shall order the defendant discharged if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect or, if so affected, that the defendant no longer presents

a danger to self or others and is not in need of care, supervision, or treatment.

(2) The court, upon its own motion or on the motion of the prosecuting attorney or the defendant, shall order a separate post-acquittal hearing for the purpose of taking evidence on the issue of physical or mental disease, disorder, or defect and the risk of danger that the defendant presents to self or others.

(3) When ordering a hearing pursuant to subsection (2):

- (a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The court may appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners; and
- (b) In felony cases, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or such longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physicians or psychologists retained by the defendant be permitted to witness the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

(4) Whether the court's order under subsection (1) is made on the basis of the medical or psychological evidence given at the trial, or on the basis of the report made pursuant to section 704-404, or the medical or psychological evidence given at a separate hearing, the burden shall be upon the State to prove, by a preponderance of the evidence, that the defendant is affected by a physical or mental disease, disorder, or defect and may not safely be discharged and that the defendant should be either committed or conditionally released as provided in subsection (1).

(5) The director of health may apply to the court to conduct a hearing to assess any further need for inpatient hospitalization of a person who is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility. The director shall make this application in a report to the circuit from which the order was issued. The director shall transmit a copy of the application and report to the prosecuting attorney of the county from which the order was issued.

(6) Any person committed pursuant to this chapter may apply to the court to conduct a hearing to assess any further need for inpatient hospitalization of the committed person acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility. The application shall be accompanied by a letter from or supporting affidavit of a qualified physician or licensed psychologist. A copy of the application and letter or affidavit shall be transmitted to the circuit from which

the order was issued. The person shall transmit a copy of the application and letter or affidavit to the prosecuting attorney of the county from which the order was issued.

(7) Upon application to the court by either the director of health or the person committed, the court shall complete the hearing process and render a decision within sixty days of the application, provided that for good cause the court may extend the sixty day time frame upon the request of the director of health or the person.

~~[(5)]~~ (8) In any proceeding governed by this section, the defendant's fitness shall not be an issue."

SECTION 4. Section 704-412, Hawaii Revised Statutes, is amended to read as follows:

**“§704-412 Committed person; application for conditional release or discharge; by the director of health; by the person.** (1) After the expiration of at least ninety days following ~~[the]~~ an original order of commitment pursuant to ~~[section 704-411,]~~ section 704-411(1)(a), or after the expiration of at least sixty days following the revocation of conditional release pursuant to section 704-413, if the director of health is of the opinion that the person committed ~~[to the director's custody]~~ is still affected by a physical or mental disease, disorder, or defect and may be ~~[released on condition]~~ granted conditional release or discharged without danger to self or to the person or property of others or that the person is no longer affected by a physical or mental disease, disorder, or defect, the director shall make an application for ~~[the discharge or conditional release of the person in]~~ either the conditional release or discharge of the person, as appropriate. In such a case, the director shall submit a report to the court [from] by which the person was ordered committed and shall transmit [a copy] copies of the application and report to the prosecuting attorney of the county from which the person was committed[-The] and to the person [shall be given notice of such application-] committed.

(2) After the expiration of ninety days from the date of the order of commitment pursuant to section 704-411, or after the expiration of sixty days following the revocation of conditional release pursuant to section 704-413, the person committed may apply to the court from which the person was committed for an order of discharge upon the ground that the person is no longer affected by a physical or mental disease, disorder, or defect. The person committed may apply for ~~[discharge or conditional release]~~ conditional release or discharge upon the ground that, though still affected by a physical or mental disease, disorder, or defect, the person may be released without danger to self or to the person or property of others. A copy of the application shall be transmitted to the prosecuting attorney of the county from which the ~~[defendant]~~ person was committed. If the ~~[determination of the court is adverse to the application,]~~ court denies the application, the person shall not be permitted to file ~~[a further]~~ another application for either conditional release or discharge until one year ~~[has elapsed from]~~ after the date of ~~[any preceding hearing on an application for the person's discharge or conditional release.]~~ the hearing held on the immediate prior application."

SECTION 5. Section 704-413, Hawaii Revised Statutes, is amended to read as follows:

**“§704-413 Conditional release; application for modification or discharge; termination of conditional release and commitment.** (1) Any person ~~[re-~~ leased] granted conditional release pursuant to ~~[section 704-411]~~ this chapter shall continue to receive mental health or other treatment and care deemed appropriate by the director of health until discharged from conditional release. The person shall follow all prescribed treatments and take all prescribed medications according to

the instructions of the person's treating mental health professional. If ~~[any]~~ a mental health professional who is treating ~~[any conditionally released]~~ a person granted conditional release believes that either the person is not complying with the requirements of this section or there is other evidence that hospitalization is appropriate, the mental health professional shall report the matter to the probation officer of the ~~[conditionally released person.]~~ person granted conditional release. The probation officer may order the ~~[conditionally released]~~ person granted conditional release to be hospitalized for a period not to exceed seventy-two hours if the probation officer has probable cause to believe the person has violated the requirements of this subsection. No person shall be hospitalized beyond the ~~[seventy-two hour]~~ seventy-two-hour period, as computed pursuant to section 1-29, unless a hearing has been held pursuant to subsection ~~[(3)-]~~ (4); provided that on or before the expiration of the seventy-two-hour period, a court may conduct a hearing to determine whether the person would benefit from further hospitalization, which may render a revocation of conditional release unnecessary. If satisfied, the court may order further temporary hospitalization for a period not to exceed ninety days, subject to extension as appropriate, but in no event for a period longer than one year. At any time within that period, the court may determine that a hearing pursuant to subsection (4) should be conducted.

(2) The director of health may apply to the court ordering any person released pursuant to this chapter, for the person's discharge from, or modification of, the order granting conditional release; provided that the person receives community-based mental health services from or contracted by the department of health, and the director is of the opinion that the person on conditional release is no longer affected by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to the person or to others. The director shall make an application for the discharge from, or modification of, the order of conditional release in a report to the circuit from which the order was issued. The director shall transmit a copy of the application and report to the prosecuting attorney of the county from which the conditional release order was issued, to the person's treating mental health professionals, and to the probation officer supervising the conditional release. The person on conditional release shall be given notice of the application.

~~[(2)]~~ (3) Any person [released] granted conditional release pursuant to [section 704-41] this chapter may apply to the court ordering the conditional release for discharge from, or modification of, the order granting conditional release on the ground that the person is no longer affected by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to the person or to others. The application shall be accompanied by a letter from or supporting affidavit of a qualified physician or licensed psychologist. A copy of the application and letter or affidavit shall be transmitted to the prosecuting attorney of the circuit from which the order issued and to any persons supervising the release, and the hearing on the application shall be held following notice to such persons. If the [determination of the] court [is adverse to] denies the application, the person shall not be permitted to file [further] another application for either discharge or modification of conditional release until one year [has elapsed from] after the date of [any preceding hearing on an application for modification of conditions of release or for discharge.] the denial.

~~[(3)]~~ (4) If, at any time after the order pursuant to [section 704-41] this chapter granting conditional release, the court determines, after hearing evidence, that:

- (a) The person is still affected by a physical or mental disease, disorder, or defect, and the conditions of release have not been fulfilled; or
- (b) For the safety of the person or others, the person's conditional release should be revoked,

the court may forthwith modify the conditions of release or order the person to be committed to the custody of the director of health, subject to discharge or release ~~only~~ in accordance with the procedure prescribed in section 704-412.

(5) Upon application for discharge from, or modification of, the order of conditional release by either the director of health or the person, the court shall complete the hearing process and render a decision within sixty days of the application, provided that for good cause the court may extend the sixty day time frame upon the request of the director of health or the person.”

PART II

SECTION 6. Patient to staff assault at Hawaii state hospital has recently been an area of heightened organizational focus and public scrutiny. Hawaii state hospital monitors and follows up on all instances of patient to patient and patient to staff assault, monitors patient and staff injuries, and has a number of continuing monitoring, supervisory and training processes focused on decreasing the instances and severity of assault, and staff or patient injury.

Although most of the assaults on staff are quite minor, not causing any injury and not requiring any treatment, a very small number can be serious. In addition, while most of the assaults are committed by patients during the first part of their hospitalization or when they are acutely psychotic, a very small number seem to be the result of behavior by an individual who has adequate self control and who knows what he or she is doing. It is with respect to this latter group that this part is directed.

The purpose of this part is to establish criminal charges against a person who intentionally or knowingly causes bodily injury to a person employed in a state-operated or -contracted mental health facility as a class C felony. Currently, such an assault would generally be a misdemeanor.

SECTION 7. Section 707-711, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) A person commits the offense of assault in the second degree if:
  - (a) The person intentionally or knowingly causes substantial bodily injury to another;
  - (b) The person recklessly causes serious or substantial bodily injury to another;
  - (c) The person intentionally or knowingly causes bodily injury to a correctional worker, as defined in section 710-1031(2), who is engaged in the performance of duty or who is within a correctional facility;
  - (d) The person intentionally or knowingly causes bodily injury to another with a dangerous instrument;
  - (e) The person intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this paragraph, “educational worker” means: any administrator, specialist, counselor, teacher, or employee of the department of education or an employee of a charter school; a person who is a volunteer, as defined in section 90-1, in a school program, activity, or function that is established, sanctioned, or approved by the department of education; or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function; ~~or~~
  - (f) The person intentionally or knowingly causes bodily injury to any emergency medical services personnel who is engaged in the performance of

- duty. For the purposes of this paragraph, “emergency medical services personnel” shall have the same meaning as in section 321-222[-]; or
- (g) The person intentionally or knowingly causes bodily injury to a person employed at a state-operated or -contracted mental health facility. For the purposes of this paragraph, “a person employed at a state-operated or -contracted mental health facility” includes health care professionals as defined in section 451D-2, administrators, orderlies, security personnel, volunteers, and any other person who is engaged in the performance of a duty at a state-operated or -contracted mental health facility.”

SECTION 8. This part does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

### PART III

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 11. This Act shall take effect on July 1, 2008.

(Approved May 23, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 101

S.B. NO. 2400

A Bill for an Act Relating to Decriminalization of Minor Offenses Pursuant to Act 124, Session Laws of Hawaii 2005.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I INTRODUCTION

SECTION 1. The legislature has been engaged in an ongoing effort to make resolution of minor criminal offenses, including traffic violations, as simple as possible for the average citizen and to ensure that police, prosecutor, and judicial resources are focused on the most serious criminal offenses. Since 1978, the legislature has undertaken comprehensive attempts to adjust the penalties for various minor criminal offenses, particularly those found outside the Hawaii penal code, such that they are consistent with the nature of the offense, the seriousness with which the offenses are viewed, and the need to deter and prevent commission of the offenses.

For example, Act 222, Session Laws of Hawaii (SLH) 1978, and Act 214, SLH 1993, sought to delete criminal penalties for nonserious traffic offenses. Many offenses were changed from criminal offenses, which can result in a prison term, to

violations, which are punishable by a maximum \$1,000 fine. These included operating a motor carrier vehicle without a safety inspection decal, leaving vehicles derelict or abandoned, failure to use a triangular emblem on a vehicle designed to move at slow speeds, and all offenses relating to the operation of bicycles. Act 214, SLH 1993, also enacted a new set of procedural provisions, chapter 291D, Hawaii Revised Statutes, designed to permit persons charged with minor offenses to pay fines by mail and to reduce the amount of time police officers and prosecutors spend in court.

The legislature also enacted Act 124, SLH 2005, which called upon the legislative reference bureau to periodically identify, review, and analyze, to the extent possible, state statutes (other than the Hawaii Penal Code) and rules that establish:

- (1) Criminal offenses specifically denominated as misdemeanors or petty misdemeanors; or
- (2) Criminal offenses that authorize imprisonment or fines in excess of \$1,000, or both,

but that involve conduct for which, typically, only a fine is imposed.

Act 124, SLH 2005, calls upon the judiciary to review the list of offenses developed by the bureau and to then “identify any offenses that involve conduct for which, typically, only a fine is imposed and those that most frequently appear before the courts.”

Act 124, SLH 2005, further requires the legislative reference bureau to “contact the state departments or agencies that have jurisdiction over the offenses identified by the judiciary and request their input as to whether and the extent to which the offenses can be decriminalized without undermining their ability to enforce laws within their jurisdiction.” Finally, Act 124, SLH 2005, requires the legislative reference bureau to “recommend changes to the penalties imposed by the state statutes and rules identified ... that would make the penalties more consistent with the penalties imposed for decriminalized traffic infractions.”

This Act is the first effort by the judiciary, various state departments, and the legislative reference bureau to fulfill the mandate of Act 124, SLH 2005, to identify minor criminal offenses for which typically only a fine is imposed and which may be decriminalized without undermining the ability of government to enforce laws within its jurisdiction. In the course of following the mandates of Act 124, SLH 2005, including legislative hearings, it became apparent that decriminalization has procedural implications that may not have been contemplated by Act 124, SLH 2005. Specifically, while decriminalization may pave the way for reduction of court appearances by citizens, law enforcement officers, and prosecutors, it separately raises at least two procedural issues. The first issue is whether a case alleging the violation of a decriminalized statute or rule will be initiated by issuance of a citation, service of a complaint, or other type of procedure. The second issue is, once the case is initiated, whether it will be adjudicated administratively by the executive department with jurisdiction or judicially, with the involvement of prosecutors or other state or county legal representatives.

The purpose of this Act is to make resolution of minor criminal offenses, including traffic violations, as simple as possible for the average citizen and to ensure that police, prosecutor, and judicial resources are focused on the most serious criminal offenses. This Act also modifies the procedure under Act 124, SLH 2005, by which minor offenses are recommended for decriminalization to require that the judiciary, the legislative reference bureau, executive branch agencies, police, and prosecutors address the procedural implications of decriminalizing minor offenses.

## PART II AGRICULTURE AND ANIMALS

SECTION 2. Section 150A-14, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Any person who violates any provision of this chapter other than sections 150A-5[(2)(B), 150A-5(2)(C)], 150A-6(3), and 150A-6(4) or who violates any rule adopted under this chapter other than those rules involving an animal that is prohibited or a plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a misdemeanor and fined not less than \$100. The provisions of section 706-640 notwithstanding, the maximum fine shall be \$10,000. For a second offense committed within five years of a prior offense, the person or organization shall be fined not less than \$500 and not more than \$25,000.

(b) Any [~~transportation company that~~] person who violates section 150A-5[(2)(B) or section 150A-5(2)(C)] shall be [~~guilty of a misdemeanor and~~] fined not less than \$100[~~. The provisions of section 706-640 notwithstanding, the maximum fine shall be~~<sup>1</sup> and not more than \$10,000. For a second [~~offense~~] violation committed within five years of a prior [~~offense,~~] violation, the [~~company~~] person may be fined not less than \$500 and not more than \$25,000.”

## PART III CONSERVATION AND RESOURCES

SECTION 3. Section 184-5, Hawaii Revised Statutes, is amended to read as follows:

“**§184-5 Rules and enforcement; penalty.** (a) The department may, subject to chapter 91, make, amend, and repeal rules having the force and effect of law, governing the use and protection of the state park system, including state monuments as established under section 6E-31, and including any private property over which there has been granted to the State any right of free public access or use for recreational, park, viewing of any historical, archaeological, natural, or scientific feature, object, or site, or related purpose, or property thereon, and also governing the use and protection of any recreational, scenic, historical, archaeological, natural, scientific, and related resources of state and private lands, and enforce [~~such~~] those rules. Any person who violates any of the rules so prescribed shall be held liable for restoration of or restitution for any damages to public or private property and shall also be subject to the confiscation of any tools and equipment used in [~~such~~] the violation and of any plants, objects, or artifacts removed illegally from such properties. Except as otherwise provided by the department, the more restrictive rules of the department shall apply in any unit of the state park system or any public use area which is also governed by the rules of any forest reserve, public hunting ground, or other department district or area.

(b) [~~Any~~] Except as provided in subsection (c), any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued thereunder, in addition to any other penalties, shall be guilty of a petty misdemeanor and shall be fined not less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(c) Any person violating this chapter, any rule adopted pursuant thereto, or the terms and conditions of any permit issued thereunder, regulating vehicular parking or traffic movement shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained



therein. A person found to have committed such a traffic infraction shall be fined not more than:

- (1) \$100 for a first violation;
- (2) \$200 for a second violation; and
- (3) \$500 for a third or subsequent violation.

~~[(e)]~~ (d) The fines specified in this section shall not be suspended or waived. Each day of each violation shall constitute a separate offense.

~~[(d)]~~ (e) Any civil penalty for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person.

~~[(e)]~~ (f) The department may confer on the director of state parks and upon other employees of the division the powers of police officers, including the power to serve and execute warrants and arrest, or issue summons or citations to, offenders in all matters relating to the enforcement, in any state park, parkway, or state monument, or in any private property over which there has been granted to the State any right of free public access or use for recreational, park, viewing of any historical, archaeological, natural, or scientific feature, object, or site, or related purpose of:

- (1) The laws applicable to the state parks and parkways and to historical objects and sites and the rules adopted under the provisions of this section; and
- (2) Traffic laws and ordinances.

~~[Such]~~ Those police powers shall also extend to the enforcement of laws of the State and the rules of the department relative to the protection and proper ~~[utilization]~~ use of the recreational, scenic, historical, natural, and archaeological, scientific, and related resources of state and private lands. ~~[Such]~~ The conferring of powers shall include the designation of ~~[such]~~ those employees as state parks enforcement officers.”

SECTION 4. Section 200-14, Hawaii Revised Statutes, is amended to read as follows:

**“§200-14 Violation of rules; penalty.** (a) ~~[Any]~~ Except as provided in subsection (b), any person who violates any rule adopted by the department under this part or who violates this part, shall be fined not more than \$1,000 or less than \$50 for each violation, and any vessel, the agents, owner, or crew of which violate the rules of the department or this part, shall be fined not more than \$1,000 or less than \$50 for each violation; provided that in addition to or as a condition to the suspension of the fines and penalties, the court may deprive the offender of the privilege of operating or mooring any vessel in state waters for a period of not more than thirty days.

(b) Any person who violates any rule adopted by the department under this part regulating vehicular parking or traffic movement shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein. A person found to have committed such a traffic infraction shall be fined not more than:

- (1) \$100 for a first violation;
- (2) \$200 for a second violation; and
- (3) \$500 for a third or subsequent violation.

~~[(b)]~~ (c) Notwithstanding the provisions of subsection (a) establishing a fine of not more than \$1,000 or less than \$50 for each violation, any person who violates any rule adopted by the department relating to unauthorized discharge, dumping, or abandoning, in any state boating facility or state waters, of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the department of health, shall be fined not more than \$10,000 for each day of violation, and any vessel, the agents, owner, or crew of which violate the rules of the department shall be fined not more than \$10,000 for each day of violation.”

**PART IV  
TRANSPORTATION AND UTILITIES**

SECTION 5. Section 261-21, Hawaii Revised Statutes, is amended to read as follows:

**“§261-21 Penalties.** (a) [Any] Except as provided in subsection (c), any person violating this chapter, or any of the rules or orders issued pursuant thereto and relating to:

- (1) Safety measures, practices, or requirements;
- (2) Airport security measures or requirements; or
- (3) The licensing and regulation of persons engaged in commercial activities at public airports,

duly adopted or served, shall be guilty of a misdemeanor.

(b) Except as provided in subsection (c), any person violating any rule relating to motor vehicles and traffic control or the operation of any equipment or motor vehicle in or on the operational area of the airport shall be guilty of an offense as defined under the Penal Code and be fined not more than \$500.

(c) Any person violating any rule relating to parking of motor vehicles or equipment at a public airport, including baggage carts, dollies, and other similar devices, shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein.”

**PART V  
MISCELLANEOUS**

SECTION 6. Act 124, Session Laws of Hawaii 2005, is amended by amending section 1 to read as follows:

“SECTION 1. (a) The legislative reference bureau shall continue the review process commenced under House Concurrent Resolution No. 261, H.D. 1, S.D. 1, 2004, by periodically identifying, reviewing, and analyzing, to the extent possible, all state statutes (other than the Hawaii Penal Code) and rules that establish:

- (1) Criminal offenses specifically denominated as misdemeanors or petty misdemeanors; or
- (2) Criminal offenses that authorize imprisonment or fines in excess of \$1,000, or both,

but that involve conduct for which, typically, only a fine is imposed.

(b) The legislative reference bureau shall provide the judiciary with a list of the offenses identified pursuant to subsection (a)(1) and (2). The judiciary shall then identify any offenses that involve conduct for which, typically, only a fine is imposed and those that most frequently appear before the courts. The legislative reference bureau shall contact the state departments or agencies that have jurisdiction over the offenses identified by the judiciary and request their input as to whether and the extent to which the offenses can be decriminalized without undermining their ability to enforce laws within their jurisdiction.

(c) If the departments or agencies do not oppose decriminalization, the departments or agencies shall indicate whether a case alleging violation of the statute or rule, if decriminalized, would thereafter be initiated by issuance of a citation, service of a complaint, or other type of process and what department or agency would initiate the case. The departments or agencies shall also indicate whether cases alleging vio-

lation of the statute or rule, if decriminalized, would be adjudicated through administrative proceedings conducted by the executive department with jurisdiction or by judicial proceedings, with the State represented by the attorney general, the prosecuting attorney, or other legal counsel. If the responses of the departments or agencies indicate that initiation and disposition of the cases would require participation by the judiciary, the attorney general, the county prosecuting attorneys, or the county police departments, the legislative reference bureau shall contact these agencies and request their input as to whether decriminalization will affect the agency's jurisdiction over the case or otherwise affect the agency's ability to participate.

[(e)] (d) The legislative reference bureau shall recommend changes to the penalties imposed by the state statutes and rules identified pursuant to subsection (a) that would make the penalties and the process by which they are imposed more consistent with the penalties [imposed] for decriminalized traffic infractions[-] and the process by which they are imposed. The legislative reference bureau shall submit a report of its findings and recommendations, including suggested legislation, no later than twenty days prior to the convening of the next regular session of the legislature.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 2009.

(Approved May 23, 2008.)

**Note**

- 1. No end bracket.

**ACT 102**

H.B. NO. 2700

A Bill for an Act Relating to the Judiciary.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act shall be known and may be cited as the Judiciary Supplemental Appropriations Act of 2008.

SECTION 2. Act 169, Session Laws of Hawaii 2007, is amended by amending part II to read as follows:

**“PART II. PROGRAM APPROPRIATIONS**

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 2007, and ending June 30, 2009. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
<b>The Judicial System</b>					
1.	JUD101 - COURTS OF APPEAL				
	OPERATING		JUD	80.00* 6,946,406A	80.00* [-7,009,698A] <u>7,089,632A</u>
			JUD	243,261W	243,261W
2.	JUD310 - FIRST JUDICIAL CIRCUIT				
	OPERATING		JUD	1,069.50* 71,101,064A	1,077.50* [69,804,878A] <u>72,635,123A</u>
			JUD	40.00* 3,515,326B	40.00* 3,515,326B
3.	JUD320 - SECOND JUDICIAL CIRCUIT				
	OPERATING		JUD	215.00* 14,450,344A	[— 216.00*] <u>220.00*</u> [14,601,905A] <u>15,345,511A</u>
			JUD	10,168B	150B
4.	JUD330 - THIRD JUDICIAL CIRCUIT				
	OPERATING		JUD	222.00* 17,494,185A	[— 222.00*] <u>229.00*</u> [17,636,248A] <u>18,203,191A</u>
5.	JUD350 - FIFTH JUDICIAL CIRCUIT				
	OPERATING		JUD	98.00* 6,878,391A	98.00* [-6,898,490A] <u>6,946,822A</u>
5.1.	<u>JUD501 - JUDICIAL SELECTION COMMISSION</u>				
	<u>OPERATING</u>		<u>JUD</u>	<u>A</u>	<u>1.00*</u> <u>94,283A</u>
6.	JUD601 - ADMINISTRATION				
	OPERATING		JUD	226.00* 22,541,795A	[— 226.00*] <u>227.00*</u> [20,555,965A] <u>22,541,873A</u>
			JUD	1.00* 6,207,227B	1.00* [-5,624,607B] <u>5,677,607B</u>
	INVESTMENT CAPITAL		JUD	100,000W 27,250,000C	100,000W [-500,000C] <u>14,260,000C"</u>

SECTION 3. Part III, Act 169, Session Laws of Hawaii 2007, is amended:

(1) By adding a new section to read as follows:

“SECTION 6.1. Provided that the general fund appropriation for the judicial circuits (JUD 310-JUD 350), the following sums or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended specifically for guardians ad litem and court-appointed counsel as follows:

<u>Program I.D.</u>	<u>Amount</u>
JUD 310	\$ 1,323,000
JUD 320	\$ 308,757
JUD 330	\$ 274,901
JUD 350	\$ 29,000;

provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the judiciary shall prepare a detailed report that shall include but not be limited to:

- (1)<sup>1</sup> A detailed breakdown of expenditures;
- (2)<sup>1</sup> A detailed breakdown of the types and number of cases requiring guardians ad litem and court-appointed counsel; and
- (3)<sup>1</sup> An analysis of the average cost per type of case;

and provided further that the judiciary shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(2) By adding a new section to read as follows:

“SECTION 6.2. Provided that of the general fund appropriation for the judicial circuits (JUD 310-JUD 350), the following sums or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended specifically for psychiatric and psychological examination fees as follows:

<u>Program I.D.</u>	<u>Amount</u>
JUD 310	\$ 250,000
JUD 320	\$ 26,000
JUD 330	\$ 115,000
JUD 350	\$ 25,000;

provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(3) By adding a new section to read as follows:

“SECTION 8.1. Provided that of the general fund appropriation for first judicial circuit (JUD 310) the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used to expand existing domestic violence services contracts; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the judiciary shall submit an expenditure report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(4) By adding a new section to read as follows:

“SECTION 8.2. Provided that of the general fund appropriation for first judicial circuit (JUD 310), the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended to support the operations and expansion of the mental health court; and provided further that a progress report shall be submitted to the legislature no later than thirty days prior to the convening of the 2009 regular session.”

(5) By adding a new section to read as follows:

“SECTION 14.1. Provided that of the special fund appropriation for administration (JUD 601), the sum of \$53,000 may be expended from the judiciary computer system special fund for computer related expenses or equipment.”

(6) By adding a new section to read as follows:

“SECTION 14.2. Provided that of the general fund appropriation for administration (JUD 601), the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used for a study to determine the feasibility of expanding the services at the Kapolei judiciary complex at Kapolei to include circuit court services; provided further that these funds shall not be used for any other purpose;

provided further that any excess funds shall lapse to the general fund; and provided further that the judiciary shall submit a report to the legislature no later than twenty days prior to the convening of the 2009 regular session."

SECTION 4. Act 169, Session Laws of Hawaii 2007, is amended by amending part IV to read as follows:

**“PART IV. CAPITAL IMPROVEMENT PROJECTS**

SECTION 15. The sum of [~~\$27,750,000~~] \$41,510,000 appropriated or authorized in part II of this Act for capital improvement projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. The amount after each cost element and the total funding for each project listed in this Part is in thousands of dollars.

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT ID	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
<b>The Judicial System</b>					
JUD601 - ADMINISTRATION					
1.		KAPOLEI JUDICIARY COMPLEX, OAHU PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE NEW KAPOLEI JUDICIARY COMPLEX AT KAPOLEI, OAHU.			
		PLANS		225	
		LAND		25	
		DESIGN		1,000	
		CONSTRUCTION		23,900	
		EQUIPMENT		50	
		TOTAL FUNDING	JUD	25,200 C	C]
1.		<u>KAPOLEI JUDICIARY COMPLEX, OAHU</u> <u>PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT</u> <u>FOR THE NEW KAPOLEI JUDICIARY COMPLEX AT KAPOLEI, OAHU.</u>			
		<u>PLANS</u>		<u>225</u>	<u>225</u>
		<u>LAND</u>		<u>25</u>	
		<u>DESIGN</u>		<u>1,000</u>	
		<u>CONSTRUCTION</u>		<u>23,900</u>	
		<u>EQUIPMENT</u>		<u>50</u>	<u>9,000</u>
		<u>TOTAL FUNDING</u>	<u>JUD</u>	<u>25,200 C</u>	<u>9,225 C</u>
2.		LUMP SUM CIP FOR JUDICIARY FACILITIES, STATEWIDE PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMODELING AND UPGRADING OF JUDICIARY BUILDINGS, STATEWIDE.			
		PLANS		100	1
		DESIGN		300	1
		CONSTRUCTION		1,000	497
		EQUIPMENT		100	1
		TOTAL FUNDING	JUD	1,500 C	500C]

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT ID	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
2.		<u>LUMP SUM CIP FOR JUDICIARY FACILITIES, STATEWIDE PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMODELING AND UPGRADING OF JUDICIARY BUILDINGS, STATEWIDE.</u>			
		PLANS		100	100
		DESIGN		300	300
		CONSTRUCTION		1,000	1,000
		EQUIPMENT		100	100
		TOTAL FUNDING	JUD	1,500 C	1,500 C
3.		<u>DOMESTIC VIOLENCE CLEARINGHOUSE AND LEGAL HOTLINE, OAHU LAND ACQUISITION TO PURCHASE OFFICE SPACE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.</u>			
		LAND		500	
		TOTAL FUNDING	JUD	500 C	C
4.		<u>VOLUNTEER LEGAL SERVICES HAWAII, OAHU DESIGN AND CONSTRUCTION FOR FACILITY IMPROVEMENTS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.</u>			
		DESIGN		10	
		CONSTRUCTION		40	
		TOTAL FUNDING	JUD	50 C	C
4.01.		<u>KEAKEALANI BUILDING COURT FACILITIES IMPROVEMENTS, HAWAII DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACILITIES IMPROVEMENTS AT THE KEAKEALANI BUILDING IN KEALAKEKUA, HAWAII.</u>			
		DESIGN			20
		CONSTRUCTION			975
		EQUIPMENT			25
		TOTAL FUNDING	JUD	C	1,020 C
4.02.		<u>HOAPILI HALE AIR CONDITIONING EQUIPMENT REPLACEMENT, MAUI DESIGN AND CONSTRUCTION FOR REPLACEMENT OF AIR CONDITIONING SYSTEM EQUIPMENT AT HOAPILI HALE, MAUI.</u>			
		DESIGN			100
		CONSTRUCTION			900
		TOTAL FUNDING	JUD	C	1,000 C
4.03.		<u>HOAPILI HALE ELEVATOR SYSTEM UPGRADE, MAUI DESIGN AND CONSTRUCTION FOR UPGRADING OF ELEVATOR SYSTEM EQUIPMENT AT HOAPILI HALE, MAUI.</u>			
		DESIGN			65
		CONSTRUCTION			565
		TOTAL FUNDING	JUD	C	630 C
4.04.		<u>KA'AHUMANU HALE AND KAUIKEAOULI HALE FACILITY REDEVELOPMENT PLANNING, OAHU</u>			
		<u>PLANS FOR DEVELOPMENT OF PORTIONS OF KA'AHUMANU HALE AND KAUIKEAOULI HALE TO BE VACATED UPON RELOCATION OF COURT FUNCTIONS TO KAPOLEI, OAHU.</u>			
		PLANS			450
		TOTAL FUNDING	JUD	C	450 C
4.05.		<u>STATUS OFFENDER SHELTER AND JUVENILE SERVICES CENTER, OAHU PLANS FOR THE DEVELOPMENT OF A NEW STATUS OFFENDER SHELTER AND JUVENILE SERVICES CENTER, OAHU.</u>			
		PLANS			225
		TOTAL FUNDING	JUD	C	225 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT ID	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
4.06.		<u>LAHAINA DISTRICT COURT AIR CONDITIONING EQUIPMENT REPLACEMENT, MAUI</u>			
		<u>DESIGN AND CONSTRUCTION FOR REPLACEMENT OF AIR CONDITIONING SYSTEM EQUIPMENT AT THE LAHAINA DISTRICT COURT FACILITY, MAUI</u>			
		<u>DESIGN</u>			<u>10</u>
		<u>CONSTRUCTION</u>			<u>50</u>
		<u>TOTAL FUNDING</u>	<u>JUD</u>	<u>C</u>	<u>60 C</u>
4.07.		<u>NORTH KOHALA DISTRICT COURT FACILITY ALTERATIONS AND IMPROVEMENTS, HAWAII</u>			
		<u>DESIGN AND CONSTRUCTION FOR FACILITY ALTERATIONS AND IMPROVEMENTS AT THE NORTH KOHALA DISTRICT COURT BUILDING IN KAPA'AU, HAWAII</u>			
		<u>DESIGN</u>			<u>40</u>
		<u>CONSTRUCTION</u>			<u>110</u>
		<u>TOTAL FUNDING</u>	<u>JUD</u>	<u>C</u>	<u>150 C</u>

SECTION 5. Act 169, Session Laws of Hawaii 2007, is amended by amending section 16 to read as follows:

“SECTION 16. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in Part II and listed in Part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed [~~\$27,750,000.~~] \$41,510,000.”

SECTION 6. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the greatest extent possible.

SECTION 7. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2008.

(Approved May 23, 2008.)

Notes

1. Should be underscored.
2. So in original.



A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds to Assist Oceanlinx Hawaii LLC.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds support for the development of efficient renewable energy systems in the state, which is geographically isolated from sources of oil and other fossil fuels, to be in the public interest.

The legislature further finds that Oceanlinx Hawaii LLC, specializes in the development, construction, and operation of electrical generation technology using ocean wave energy, often referred to as hydrokinetic technology, with hydrokinetic power projects under development in Rhode Island, the United Kingdom, Australia, and South Africa. Oceanlinx Hawaii LLC, is engaged in the planning, design, and construction of a hydrokinetic power facility to be located off-shore of Maui to supply electric energy generated from wave energy as a renewable energy source to Maui Electric Company, Inc., and will replace a portion of the petroleum-based fuels presently being used in the state.

The legislature further finds that the issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act to assist Oceanlinx Hawaii LLC, in planning, designing, and constructing a wave energy, or hydrokinetic, power facility and supplying electric energy generated from that facility to an electric utility for resale to the general public will contribute to the use of this renewable energy resource of the state and will provide numerous benefits, including:

- (1) Reducing dependence on imported fossil fuels for electrical generation, thereby increasing Hawaii's energy security;
- (2) Helping to meet Hawaii's renewable energy goals by using existing natural energy resources;
- (3) Supporting the environmentally beneficial development of one of Hawaii's abundant renewable energy resources; and
- (4) Assisting the State, county of Maui, and the federal government to meet their goals and mandates for energy efficiency and renewable energy use.

SECTION 2. The legislature further finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 3. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$20,000,000, in one or more series, for the purpose of assisting Oceanlinx Hawaii LLC, with the planning, design, and construction of the hydrokinetic power generation facility off-shore of Maui. The legislature hereby finds and determines that hydrokinetic power generation constitutes a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 4. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2013, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 3 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 3. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2013.

SECTION 7. This Act shall take effect on July 1, 2008.

(Approved May 23, 2008.)

## ACT 104

S.B. NO. 1720

A Bill for an Act Relating to Special Purpose Revenue Bonds to Assist Jacoby Development, Inc., a Processing Enterprise.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part IV, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$100,000,000, in one or more series, for the purpose of assisting Jacoby Development, Inc. - Geoplasma LLC, with the planning, designing, constructing, and equipping of, and the acquisition of lands for, a plasma municipal solid waste processing system to convert solid wastes into electricity and chemically and biologically inert slag, in the State of Hawaii. The legislature hereby finds and determines that the planning, designing, constructing, and equipping of, and the acquisition of lands for, a plasma municipal solid waste processing system constitutes a project as defined in part IV, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a processing enterprise.

SECTION 3. The special purpose revenue bonds shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2013, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refund-

## ACT 105

ing special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2013.

SECTION 6. This Act shall take effect on July 1, 2008.

(Approved May 23, 2008.)

## ACT 105

S.B. NO. 3190

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Sopogy Inc., in the Development of Renewable Energy on the Island of Oahu.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the development of clean electricity from a renewable and abundant resource, the sun, at a price lower than the market price and independent from oil price fluctuations, is in the best interests of the public. Sopogy, Inc., specializes in the development, manufacture, and distribution of its proprietary concentrated solar power systems that generate electricity. The legislature finds that the construction of a solar farm power plant that Sopogy, Inc., seeks to create on the island of Oahu would support the State's renewable energy goals.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and is beneficial to the public health, safety, and general welfare.

The legislature further finds that part V, chapter 39A, Hawaii Revised Statutes, permits the State to financially assist industrial enterprises through the issuance of special purpose revenue bonds and that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State. The legislature finds that Sopogy, Inc., is an industrial enterprise meeting the qualifications for special purpose revenue bond assistance under part V, chapter 39A, Hawaii Revised Statutes. The special purpose revenue bonds authorized under this Act will provide low interest rate bond financing for the construction of a solar farm power plant on the island of Oahu.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$35,000,000, in one or more series, for the purpose of assisting Sopogy, Inc., with the planning, designing, construction, equipping, and operating Sopogy, Inc.'s solar farm power plant on the island of Oahu.

The legislature hereby finds and determines that the activity and facilities of Sopogy, Inc., constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2013, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2013.

SECTION 6. This Act shall take effect on July 1, 2008.

(Approved May 23, 2008.)

## ACT 106

H.B. NO. 2245

A Bill for an Act Relating to the University of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 304A-2251, Hawaii Revised Statutes, is amended to read as follows:

**“~~§~~304A-2251~~§~~ University of Hawaii commercial enterprises revolving fund.** There is established the University of Hawaii commercial enterprises revolving fund into which shall be deposited all revenues derived from the operation of commercial enterprises by university programs. Revenues deposited into this ~~account~~ fund may be expended by the university for all costs and expenses associated with the operation of the enterprises, including hiring personnel, renovating commercial space, and purchasing merchandise, supplies, and equipment, without regard to chapters 76, 78, 89, 103, and 103D. Any law to the contrary notwithstanding, the university may transfer all funds at its disposal, with the exception of general funds and University of Hawaii tuition and fees special fund moneys, into the revolving fund to finance the establishment of new commercial enterprises; except that no more than ten per cent of the tuition and fees special fund moneys may be loaned to the revolving fund to finance the establishment of new commercial enterprises. Revenues not expended as provided in this section may be transferred to other university funds to be expended for the general benefit of the university.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2008, and shall be repealed on June 30, 2011.

(Approved May 23, 2008.)

A Bill for an Act Relating to the Jurisdiction of the Circuit Courts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to maintain the process of impeachment of appointed or elected officers of each county, by expanding the jurisdiction of the circuit courts to include impeachment proceedings against county officers.

SECTION 2. Section 603-21.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The several circuit courts shall have jurisdiction, except as otherwise expressly provided by statute, of:

- (1) Criminal offenses cognizable under the laws of the State, committed within their respective circuits or transferred to them for trial by change of venue from some other circuit court;
- (2) Actions for penalties and forfeitures incurred under the laws of the State;
- (3) Civil actions and proceedings, in addition to those listed in sections 603-21.6, 603-21.7, and 603-21.8[-]; and
- (4) Actions for impeachment of county officers who are subject to impeachment.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 23, 2008.)

A Bill for an Act Relating to Business Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 482, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

**“PART . MISCELLANEOUS**

**§482-A Penalties for signing false documents.** (a) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the director for filing. An offense under this subsection shall be a class C felony and may carry a fine not to exceed \$10,000.

(b) A person commits a misdemeanor if the person negligently and without intent to defraud signs a document that is false in any material respect with intent that the document be delivered to the director for filing. The misdemeanor may carry a fine not to exceed \$2,000.

**§482-B Liability for fraudulent registration.** Any person who knowingly makes a false or fraudulent representation or declaration in registration documents

filed with the director shall be liable for all damages sustained as a result of the registration documents as determined by a court of competent jurisdiction.

**§482-C Common law rights.** Nothing in this chapter shall adversely affect common law rights in trade names, entity names, service marks, or trademarks, or the enforcement of those rights.

**§482-D Severability.** If any provision of this chapter is deemed to be invalid, the remaining provisions of this chapter shall continue to be effective.”

SECTION 2. Chapter 482, Hawaii Revised Statutes, is amended by designating section 482-1 as part I, entitled “General Provisions”.

SECTION 3. Chapter 482, Hawaii Revised Statutes, is amended by designating sections 482-2 through 482-9 as part II, entitled “Trade Names”.

SECTION 4. Chapter 482, Hawaii Revised Statutes, is amended by designating section 482-21 through 482-37 as part III, entitled “Trademarks and Service Marks”.

SECTION 5. Chapter 482, part I, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“PART I. ~~[TRADE NAMES]~~ GENERAL PROVISIONS”**

SECTION 6. Chapter 482, part II, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“PART II. ~~[TRADEMARKS AND SERVICE MARKS]~~ TRADE NAMES”**

SECTION 7. Section 482-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Entity” means a corporation, partnership, limited liability company, or any other type of business entity recognized in this State.”

SECTION 8. Section 482-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director shall cause the trade name to be recorded and shall issue ~~[to the applicant]~~ a certificate of registration~~[-] to the applicant; provided that the director shall not register any trade name that is substantially identical with any registered trade name, the name of any entity registered or authorized to transact business in accordance with the laws of the State, or any mark registered in the State, except as ordered by the director in accordance to section 482-8.5 or unless the registered owner of the registered trade name, entity name, or mark consents in writing.~~ The certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the trade name throughout the State, for the term of five years from the date thereof; provided that the ~~[director shall not register any trade name which is substantially identical with any registered trade name or with the name of any corporation, partnership, limited partnership, limited liability partnership, or limited liability company registered in accordance with chapters 414, 414D, 415A, 425, 425E, and 428; provided further that the]~~ trade name is continued in actual use by the applicant in this State. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any ~~[person to any~~

~~corporation, partnership, limited partnership, limited liability partnership, or limited liability company name, or trade name.] person claiming to be the legal owner of a trade name.”~~

SECTION 9. Section 482-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful for any person to adopt or use a trade name or entity name that ~~[is substantially identical or confusingly similar]~~ infringes on any person’s ownership rights to any registered trade name, mark, or the name of any ~~[corporation, partnership, or limited liability company existing or registered,]~~ entity registered or authorized to transact business in accordance with the laws of this State, or a name the exclusive right to which is, at the time, reserved in this State. In addition to the revocation of a trade name registration or administrative order of abatement provisions in sections 482-8 and 482-8.5, respectively, any person whose ownership rights to a trade name, mark, or entity name are infringed upon by the adoption or use of a confusingly similar trade name or entity name may seek injunctive relief in a court of competent jurisdiction or the imposition of a fine that shall not exceed \$2,000, or both.”

SECTION 10. Section 482-8, Hawaii Revised Statutes, is amended to read as follows:

**“§482-8 Revocation of [certificate; ownership.] trade name registration.**

(a) Any person claiming to be the owner of a trade name or mark whose common law rights are infringed upon, or any entity registered or authorized to transact business under the laws of this State whose common law right to its entity name are infringed upon, by a trade name for which a certificate of registration pursuant to this chapter has been issued to any other person [shall] may file a [verified] petition in the office of the director for the revocation of the registration of [such] that trade name. The petition shall set forth the facts [in support of the ownership by such petitioner of such trade name and in support of the claim of the petitioner] and authority supporting the claim that the petitioner has common law rights of ownership of the trade name, mark, or entity name, that these rights are being infringed upon by the other registered trade name that is confusingly similar to the petitioner’s trade name, mark, or entity name, and that the certificate of registration should be revoked.

(b) Any person with a registered trade name in this State, or any entity registered or authorized to transact business under the laws of this State, claiming that another subsequently registered trade name is substantially identical to its registered trade name or entity name, respectively, may file a petition in the office of the director for the revocation of the registration of the subsequently registered trade name. The petition shall set forth the facts and authority supporting the claim that the petitioner’s registered trade name or entity name is substantially identical to the subsequently registered trade name, the petitioner’s trade name or entity name was registered before the subsequently registered trade name, and the registration of the subsequently registered trade name should be revoked.

(c) The petitioner [shall], at the petitioner’s expense, shall notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5 and the registrant shall be given the opportunity [øf] for a hearing in accordance with chapter 91.

~~[(e)]~~ (d) After granting an opportunity for hearing to the petitioner and the registrant, the director shall grant or deny the petition for revocation, as the facts shall warrant.”

SECTION 11. Section 482-8.5, Hawaii Revised Statutes, is amended to read as follows:

**“§482-8.5 Administrative order of abatement [for infringement of trade name.] against a registered or authorized entity.** (a) Any ~~[individual or sole proprietor with a currently registered trade name in this State]~~ person claiming to be the owner of a trade name or mark who believes that the name of any entity registered or authorized to transact business under the laws of this State is [substantially identical to, or] confusingly similar to~~[-]~~ its trade name or mark may file a petition with the director for an administrative order of abatement to address the infringement of its trade name~~[-] or mark~~. The petition shall set forth the facts and authority ~~[that support the petitioner's claim]~~ supporting the claim that the petitioner has common law rights of ownership of the trade name or mark, that these rights are being infringed upon by a registered or authorized entity whose name is confusingly similar to the petitioner's trade name or mark, and that further use of the entity name should be abated.

(b) Any person with a registered trade name in this State claiming that another subsequently registered name of any entity registered or authorized to transact business under the laws of this State is substantially identical to its registered trade name may file a petition with the director for an administrative order of abatement against the use of the subsequently registered entity name. The petition shall set forth the facts and authority supporting the claim that the petitioner's registered trade name is substantially identical to the subsequently registered entity name, the petitioner's trade name was registered before the subsequently registered entity name, and further use of the subsequently registered entity name should be abated.

(c) The petitioner, at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by chapter 91 and the registrant shall be given an opportunity to respond to the petition at the hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

~~[(b)]~~ (d) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but require the entity to:
  - (A) Register a new trade name with the director; and
  - (B) Transact business in this State under the new trade name; or
- (2) Require the entity to change its registered name, and to:
  - (A) ~~[Register]~~ File a [new trade] name change with the director; and
  - (B) Transact business in this State under the new ~~[trade]~~ name.

If the entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapter 414, 414D, 415A, 425, 425E, or 428, as applicable.

~~[(e)]~~ (e) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. Review of any final decision of the circuit court shall be governed by chapter 602.”

SECTION 12. Section 482-21, Hawaii Revised Statutes, is amended to read as follows:

**“§482-21 Registrability.** A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:



- (1) Consists of or comprises immoral, deceptive, or scandalous matter;
- (2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;
- (3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;
- (4) Consists of or comprises the name, signature, or portrait identifying a particular living individual, except by the individual's written consent;
- (5) Consists of a mark that:
  - (A) When used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;
  - (B) When used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or
  - (C) Is primarily a surname;
 provided that nothing in this paragraph shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The director may accept as evidence that the mark has become distinctive as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this State for the five years before the date on which the claim of distinctiveness is made; [øf]
- (6) Consists of a mark which so resembles a mark registered in this State or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive[-]; or
- (7) Consists of a mark that is substantially identical with any registered trade name or the name of any entity registered or authorized to transact business in accordance with the laws of this State."

SECTION 13. Section 482-31, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§482-31]]~~ **Infringement.** Subject to section ~~[482-35;]~~ 482-\_\_, any person who:

- (1) Uses, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this part in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in which such use is likely to cause confusion or mistake, or to deceive, as to the source of origin of such goods or services; or
- (2) Reproduces, counterfeits, copies, or colorably imitates a mark registered under this part and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used on or in connection with the sale or other distribution in this State of such goods or services;

shall be liable in a civil action by the registrant for any and all of the damages and remedies provided in section 482-33; provided that under paragraph (2) the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion, mistake, or to deceive.”

SECTION 14. Section 482-3.5, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 482-5, Hawaii Revised Statutes, is repealed.

SECTION 16. Section 482-30, Hawaii Revised Statutes, is repealed.

SECTION 17. Section 482-35, Hawaii Revised Statutes, is repealed.

SECTION 18. Section 482-37, Hawaii Revised Statutes, is repealed.

SECTION 19. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 20. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 21. This Act shall take effect upon its approval.

(Approved May 23, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 109

H.B. NO. 3120

A Bill for an Act Relating to Animal Quarantine Facilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 142-3.5, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§142-3.5~~]]~~ Authority to contract or rent facilities.** The board of agriculture ~~[is authorized to]~~ may contract with third parties for the use or rental of animal quarantine property or facilities; provided that:

- (1) The board determines the property or facilities are not required for use by the animal quarantine program during the term of use by the third party;
- (2) The property or facilities shall be leased or rented at ~~[fair market value;]~~ a reasonable lease rent as determined by the board of agriculture; ~~[and]~~
- (3) The property or facilities shall be used for animal welfare, including emergency shelters for animals, or agriculture-related purposes; and
- ~~[(3)]~~ (4) The property or facilities shall be used only by the third party.

Revenues generated by the use or rental of the animal quarantine property or facilities shall be used to defray the operational costs of the animal quarantine program and to minimize animal quarantine fees.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 23, 2008.)

A Bill for an Act Relating to Environmental Impact Statements.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purposes of this Act are to:

- (1) Clarify the office of environmental quality control’s role and authority to coordinate, at the earliest time possible, the requirements and responsibilities of a state or county agency to conduct an environmental review when two or more state or county agencies have jurisdiction over a proposed action; and
- (2) Clarify the rule-making authority of the environmental council.

SECTION 2. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Whenever an applicant [~~simultaneously~~] requests approval for a proposed action [~~from two or more agencies~~] and there is a question as to which [~~agency~~] of two or more state or county agencies with jurisdiction has the responsibility of preparing the environmental assessment, the office, after consultation with [the agencies involved,] and assistance from the affected state or county agencies, shall determine which agency shall prepare the assessment.”

SECTION 3. Section 343-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“~~[(a) After consultation with the affected agencies, the council shall adopt, amend, or repeal necessary rules for the purposes of this chapter in accordance with chapter 91 including, but not limited to, rules which shall:~~

- ~~(1) Prescribe the contents of an environmental impact statement;~~
- ~~(2) Prescribe the procedures whereby a group of proposed actions may be treated by a single statement;~~
- ~~(3) Prescribe procedures for the preparation and contents of an environmental assessment;~~
- ~~(4) Prescribe procedures for the submission, distribution, review, acceptance or nonacceptance, and withdrawal of a statement;~~
- ~~(5) Prescribe procedures to appeal the nonacceptance of a statement to the environmental council;~~
- ~~(6) Establish criteria to determine whether a statement is acceptable or not;~~
- ~~(7) Establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an assessment;~~
- ~~(8) Prescribe procedures for informing the public of determinations that a statement is either required or not required, for informing the public of the availability of draft statements for review and comments, and for informing the public of the acceptance or nonacceptance of the final statement; and~~
- ~~(9) Prescribe the contents of an environmental assessment.]~~

(a) After consultation with the affected agencies, the council shall adopt, amend, or repeal necessary rules for the purposes of this chapter in accordance with chapter 91 including, but not limited to, rules that shall:

- (1) Prescribe the procedures whereby a group of proposed actions may be treated by a single environmental assessment or statement;

- (2) Establish procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an environmental assessment;
- (3) Prescribe procedures for the preparation of an environmental assessment;
- (4) Prescribe the contents of an environmental assessment;
- (5) Prescribe procedures for informing the public of determinations that a statement is either required or not required, for informing the public of the availability of draft environmental impact statements for review and comments, and for informing the public of the acceptance or nonacceptance of the final environmental statement;
- (6) Prescribe the contents of an environmental impact statement;
- (7) Prescribe procedures for the submission, distribution, review, acceptance or nonacceptance, and withdrawal of an environmental impact statement;
- (8) Establish criteria to determine whether an environmental impact statement is acceptable or not; and
- (9) Prescribe procedures to appeal the nonacceptance of an environmental impact statement to the environmental council.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 27, 2008.)

## ACT 111

S.B. NO. 2895

A Bill for an Act Relating to Offenses Against Public Order.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 711-1100, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Equine animal” means an animal of or belonging to the family Equidae, including horses, ponies, mules, donkeys, asses, burros, and zebras.”

SECTION 2. Section 711-1108.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§711-1108.5]]~~ **Cruelty to animals in the first degree.** (1) A person commits the offense of cruelty to animals in the first degree if the person intentionally or knowingly tortures, mutilates, or poisons or causes the torture, mutilation, or poisoning of any pet animal or equine animal resulting in serious bodily injury or death of the pet animal~~[-]~~ or equine animal.

(2) Subsection (1) shall not apply to:

- (a) Accepted veterinary practices;
- (b) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices; or
- (c) Cropping or docking as customarily practiced.

(3) Whenever any pet animal or equine animal is so severely injured that there is no reasonable probability that its life can be saved, the ~~[pet]~~ animal may be immediately destroyed without creating any offense under this section.

(4) Cruelty to animals in the first degree is a class C felony.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon approval.

(Approved May 27, 2008.)

ACT 112

H.B. NO. 3174

A Bill for an Act Relating to Federal Fisheries Regulations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 187A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§187A- Consistency of state and federal fisheries regulations. (a)

The department shall adopt administrative rules pursuant to chapter 91 for fisheries located in both state and federal waters, that are equivalent to and consistent with federal fisheries regulations for the same waters, to create uniform, complementary, and comprehensive management measures to improve efficiencies in management and effectiveness of enforcement, under the following conditions:

(1) A federal agency with responsibility for the management of fisheries in federal marine waters around the Hawaiian Islands has:

- (A) Declared that a fishery is in a state of overfishing, is overfished, or is in some other state of unsustainability; and
- (B) Promulgated or amended federal fisheries regulations to correct the decline in the fishery;

and

(2) The fishery occurs in both state and federal marine waters.

(b) The board shall annually establish a fishing season, a total fishing quota, or individual fishing quotas, or adopt rules pursuant to chapter 91 relating to bag, size, and gear limits, consistent with federal fisheries regulations that are adopted or declared by the federal government to prevent overfishing and with similar state rules adopted under subsection (a).

(c) If the federal fisheries agency declares a fishery to be sustainable and amends or repeals its regulations accordingly, the department shall amend or repeal any rules for that fishery adopted under subsection (a).

(d) Nothing contained in this section shall be construed to prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices authorized by law or permitted by the department pursuant to article XII, section 7, of the Hawaii Constitution.

(e) This section shall not apply to the Papahānaumokuākea Marine National Monument.

(f) As used in this section, unless the context clearly indicates otherwise:

“Declared” or “declares” means a public announcement made by a federal agency with the responsibility for the management of fisheries in federal marine waters around the Hawaiian Islands pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (P.L. 94-265), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act

of 2006 (P.L. 109-479), that a fishery in state marine waters is in a state of overfishing, overfished, or in some other state of unsustainability.

“Federal fisheries regulations” means regulations relating to the management of marine fisheries adopted by federal agencies such as the National Marine Fisheries Service or the United States Department of Commerce, and codified in the Code of Federal Regulations.

“Federal marine waters” means the Exclusive Economic Zone established by Presidential Proclamation 5030, 3 Code of Federal Regulations 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from a baseline starting at the seaward boundary of state territorial seas extending seaward two hundred nautical miles.

“Fishery” or “fisheries” means one or more stocks of marine resources other than marine mammals and birds that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks.

“Overfishing” or “overfished” means a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved May 27, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 113

H.B. NO. 3175

A Bill for an Act Relating to Commercial Marine Fishing Reports.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The federal government currently relies upon the State’s fisheries reporting system and the resultant data for the management of fisheries in state and federal marine waters. Because of a declared decline in the bottomfish fishery due to overfishing, the federal government recently voiced the need for the State to better monitor bottomfish catches. In an effort to address these issues, the federal government proposes to reduce overall take to a specified annual total catch and then to monitor fishing more closely by requiring reporting by trips, rather than reports solely based on monthly catch.

The department of land and natural resources (department) has agreed to assist and cooperate because it involves a fishery with shared jurisdiction and agrees with the reporting requirement.

The purpose of this Act is to create a new section within chapter 189, Hawaii Revised Statutes, providing that where there is shared state and federal jurisdiction over a fishery, except the Papahānaumokuākea Marine National Monument, that the department shall adopt rules to effectuate the federal requirements.

SECTION 2. Chapter 189, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§189- Catch report; shared jurisdiction of fisheries. (a) Where there is a shared jurisdiction between the state and federal government over a fishery, the department shall adopt rules necessary to effectuate the federal requirements.

(b) Any information submitted to the department by any person in compliance with any requirement under this section shall be confidential and shall not be disclosed, except when required under court order or pursuant to subpoena issued by the department of the attorney general, or with the prior written consent of the person who submitted the information, or under cooperative agreements with government agencies of the United States for exchange and use of the information specifically to manage marine life. The department, by rule, may establish procedures necessary to preserve the confidentiality, except that the department may release or make public any information in the aggregate or summary form which does not directly or indirectly disclose the identity of any person who submits information.

(c) This section shall not apply to the Papahānaumokuākea Marine National Monument.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved May 27, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 114

S.B. NO. 2054

A Bill for an Act Relating to Family Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-481, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-481]]~~ **Definitions.** As used in this ~~[[subpart]]~~, unless the context otherwise requires:

“Caregiver” means any person who is at least eighteen years of age and:

- (1) Related by blood, marriage, or adoption to the minor, including a person who is entitled to an award of custody pursuant to section ~~[[571-46(2)]]~~ 571-46(a)(2) but is not the legal custodian or guardian of the minor; or
- (2) Has resided with the minor for a continuous immediate preceding period of six months or more.”

SECTION 2. Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

“§571-46 Criteria and procedure in awarding custody and visitation[-]; best interest of the child. (a) In ~~the~~ actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the

final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child, and the court also may [~~also~~] consider frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child;
- (2) Custody may be awarded to persons other than the father or mother whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;
- (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court shall make investigations and reports [~~which~~] that shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence; provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated;
- (5) The court may hear the testimony of any person or expert, produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;
- (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award;
- (7) Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;
- (8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify;
- (9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court [~~must~~] shall consider in a proceeding in which the custody of a child or visita-



tion by a parent is at issue, and in which the court has made a finding of family violence by a parent:

- (A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;
  - (B) The court shall consider the perpetrator’s history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person; and
  - (C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation;
- (10) A court may award visitation to a parent who has committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence;
- (11) In a visitation order, a court may:
- (A) Order an exchange of a child to occur in a protected setting;
  - (B) Order visitation supervised by another person or agency;
  - (C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
  - (D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;
  - (E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;
  - (F) Prohibit overnight visitation;
  - (G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;
  - (H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and
  - (I) Order the address of the child and the victim to be kept confidential;
- (12) The court may refer but shall not order an adult who is a victim of family violence to attend, either individually or with the perpetrator of the family violence, counseling relating to the victim’s status or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation;
- (13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation; and
- (14) A supervised visitation center [~~must~~] shall provide[?] a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation and supervision by a person trained in security and the avoidance of family violence.

(b) In determining what constitutes the best interest of the child under this section, the court shall consider, but not be limited to, the following:

- (1) Any history of sexual or physical abuse of a child by a parent;
- (2) Any history of neglect or emotional abuse of a child by a parent;

- (3) The overall quality of the parent-child relationship;
- (4) The history of caregiving or parenting by each parent prior and subsequent to a marital or other type of separation;
- (5) Each parent's cooperation in developing and implementing a plan to meet the child's ongoing needs, interests, and schedule; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;
- (6) The physical health needs of the child;
- (7) The emotional needs of the child;
- (8) The safety needs of the child;
- (9) The educational needs of the child;
- (10) The child's need for relationships with siblings;
- (11) Each parent's actions demonstrating that they allow the child to maintain family connections through family events and activities; provided that this factor shall not be considered in any case where the court has determined that family violence has been committed by a parent;
- (12) Each parent's actions demonstrating that they separate the child's needs from the parent's needs;
- (13) Any evidence of past or current drug or alcohol abuse by a parent;
- (14) The mental health of each parent;
- (15) The areas and levels of conflict present within the family; and
- (16) A parent's prior wilful misuse of the protection from abuse process under chapter 586 to gain a tactical advantage in any proceeding involving the custody determination of a minor. Such wilful misuse may be considered only if it is established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular family circumstance the wilful misuse tends to show that, in the future, the parent who engaged in the wilful misuse will not be able to cooperate successfully with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of the best interests of the child. For the purposes of this section, when taken alone, the voluntary dismissal of a petition for protection from abuse shall not be treated as prima facie evidence that a wilful misuse of the protection from abuse process has occurred."

SECTION 3. Section 571-46.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"§571-46.1 Joint custody.<sup>1</sup>** (a) Upon the application of either parent, joint custody may be awarded in the discretion of the court. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate, the court shall, upon the request of either party, direct that an investigation be conducted pursuant to the provisions of section [~~571-46(4).~~] 571-46(a)(4)."

SECTION 4. Section 577-28, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) As used in this section, "caregiver" means any person who is at least eighteen years of age and:

- (1) Is related by blood, marriage, or adoption to the minor, including a person who is entitled to an award of custody pursuant to section [~~571-46(2).~~] 571-46(a)(2) but who is not the legal custodian or guardian of the minor; or

- (2) Has resided with the minor continuously during the immediately preceding period of six months or more.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2008.

(Approved May 27, 2008.)

**Note**

- 1. So in original.

**ACT 115**

S.B. NO. 2768

A Bill for an Act Relating to the Issuance of Revenue Bonds to Assist the Maui Region of the Hawaii Health Systems Corporation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that significant public benefit will be realized through the planning, construction, improvement of, and purchase and replacement of equipment for the Maui memorial medical center, a facility located in the Maui region of the Hawaii health systems corporation. The legislature further finds that the issuance of revenue bonds under this Act is in the public interest and for the benefit of the public health, safety, and welfare.

SECTION 2. In addition to revenue bonds authorized by section 323F-7(c)(15), Hawaii Revised Statutes, under section 3 of this Act, the Maui health care regional system board of the Hawaii health systems corporation, with the approval of the governor or the director of finance, is authorized to issue revenue bonds in a total amount of \$150,000,000 in one or more series, for the purpose of assisting the Maui region of the Hawaii health systems corporation to finance the construction, improvement, and equipment of its health care facilities, including:

- (1) Construction of a new heart, brain, and vascular center on Maui offering the following services:
  - (A) Cardiovascular services:
    - (i) Interventional cardiology;
    - (ii) Electrophysiology;
    - (iii) Vascular/endovascular;
    - (iv) Heart surgery;
    - (v) Cardiac rehabilitation; and
    - (vi) Disease management;
  - (B) Brain services, including interventional neuro radiology; and
  - (C) Neurosurgery; and
- (2) Purchasing of new and replacement equipment for the center.

SECTION 3. Pursuant to section 323F-7(c)(15), Hawaii Revised Statutes, the Maui health care regional system board of the Hawaii health systems corporation, with the approval of the governor or the director of finance, is authorized to issue revenue bonds from time to time to finance, in whole or in part, the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or

extension of any undertaking or the establishment and administration of any loan program as authorized by law.

SECTION 4. (a) Bond terms. The principal of and interest on the revenue bonds issued pursuant to section 2 shall be payable solely from and secured solely by the revenues produced by the heart, brain, and vascular center financed by the bonds.

(b) The revenue bonds may also be used to finance capitalized interest on the bonds and any other expenses incidental thereto or connected therewith, including planning, design, engineering, inspection, legal, and fiscal agent fees and costs of the issuance of the revenue bonds.

(c) The bonds shall be special, limited obligations of the State, payable exclusively from and secured by a lien on the revenues of the heart, brain, and vascular center financed by the bonds.

(d) The revenue bonds shall not be secured by the taxing power of the State. The principal on the bonds and any premiums upon the redemption thereof shall not constitute or evidence a debt of the State, nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property, or upon any of its income, receipts, or revenues, except the revenues of the heart, brain, and vascular center financed by the bonds.

SECTION 5. The Maui health care regional system board of the Hawaii health systems corporation is authorized, from time to time, including times subsequent to June 30, 2013, to issue revenue bonds in whatever principal amounts the board shall determine to be necessary to refund the revenue bonds authorized in section 2 and to refund revenue bonds authorized in this section, regardless of whether the outstanding revenue bonds or refunding revenue bonds have matured or are the subject of redemption or whether the refunding revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the board shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The revenue bonds and the refunding revenue bonds issued under this Act shall be issued pursuant to section 323F-7(c)(15), Hawaii Revised Statutes.

SECTION 7. There is appropriated out of the revenue bond proceeds authorized by this Act the sum of \$150,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 to carry out the purposes of this Act.

The sum appropriated shall be expended by the Maui health care regional system board of the Hawaii health systems corporation for the purposes of this Act.

SECTION 8. The authorization to issue revenue bonds under this Act shall lapse on June 30, 2013.

SECTION 9. This Act shall take effect on July 1, 2008.

(Approved May 27, 2008.)

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii's dependence on petroleum for approximately ninety per cent of its energy needs is more than any other state in the nation. This dependence makes the state extremely vulnerable to oil embargos, supply disruptions, international market dysfunctions, and many other factors beyond the control of the State. Furthermore, the continued consumption of conventional petroleum fuel adversely affects the environment.

The legislature also finds that increased energy efficiency and use of renewable energy resources would increase Hawaii's energy self-sufficiency. Energy self-sufficiency would have broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

The legislature has worked steadily to encourage the deployment of renewable energy resources and energy-efficiency initiatives. Initiatives have included:

- (1) Establishing a net energy metering program, interconnection standards, and renewable energy tax credits;
- (2) Establishing greenhouse gas and energy consumption reduction goals for state facilities and requiring the use of energy-efficient products in state facilities; and
- (3) Providing incentives for the deployment of solar energy devices.

The legislature has also established a renewable energy portfolio standard under which twenty per cent of Hawaii's electricity is to be generated from renewable resources by the end of 2020.

Hydrogen technology development is currently attracting billions of dollars in investment capital, not only in the United States but also in European countries and Japan. Federal initiatives are resulting in the development of hydrogen and fuel cell technologies in partnership with automakers and major energy companies. Analysts predict that these initiatives, along with efforts in other countries, will lead to the development of markets for hydrogen and supportive hydrogen fuel cell technologies and infrastructure.

Hawaii has among the most abundant renewable energy resources in the world, in the form of solar, geothermal, wind, biomass, and ocean energy assets. Consequently, the island of Hawaii produces more electricity from renewable resources than can currently be used. Several wind projects are expected to be completed in the near term, exacerbating this problem. Furthermore, the Puna geothermal project is planning to increase its energy contribution if the electric utility can take and use the energy.

The excess of geothermal and other renewable energy resources creates an unprecedented, historic opportunity for Hawaii to emerge as a leader in the use of hydrogen fuel by producing hydrogen using water electrolysis. This clean, renewable hydrogen would then be used as an energy carrier for stationary power and transportation fuels, making the island self-sufficient. Hydrogen could also be exported to Oahu and the other islands as the clean fuel of choice for power generation and transportation fuels, achieving greater self-sufficiency for the State of Hawaii.

The historic confluence of the State's desire for energy self-sufficiency through development of renewable energy with the global opportunity of the emerging hydrogen economy calls for a major, far-sighted initiative to develop Hawaii's renewable energy resources.

The legislature further finds that H2 Technologies Incorporated proposes to build a facility and laboratory to develop, manufacture, and license hydrogen generator appliances on the island of Hawaii at the natural energy laboratory of Hawaii. H2 Technologies Incorporated is engaged in the planning, design, and construction of a hydrogen generator production facility on the island of Hawaii to supply a clean source of electricity and transportation fuel replacing a portion of the unsustainable and expensive petroleum-based gasoline or diesel fuel. H2 Technologies Incorporated will also construct a gasoline- or diesel-to-hydrogen automobile conversion garage to help facilitate the use of hydrogen by automobile owners, thus, moving Hawaii into a sustainable hydrogen economy.

SECTION 2. (a) The legislature finds that the issuance of special purpose revenue bonds and refunding of special purpose revenue bonds under this Act to assist H2 Technologies Incorporated in the planning, design, and construction of a hydrogen generator production facility on the island of Hawaii will supply a clean source of electricity and transportation fuel, reduce the use of unsustainable and expensive petroleum-based gasoline and diesel fuel, and provide numerous other benefits. Use of hydrogen as a transportation fuel and for use with fuel cell technology for electrical generation will:

- (1) Reduce Hawaii's dependence on imported fossil fuels, including gasoline and diesel, for electrical generation and transportation, thereby increasing Hawaii's energy security;
  - (2) Help to meet Hawaii's renewable energy goals by encouraging home or office energy production with on-island-produced renewable hydrogen;
  - (3) Reduce greenhouse gas emissions via a renewable closed-loop carbon system; and
  - (4) Provide significant reductions of hydrocarbon, sulfur, toxic compounds, and particulate matter emissions as compared to burning petroleum-based fossil fuels.
- (b) Benefits from the H2 Technologies Incorporated project will include:
- (1) Encouraging local high-technology clean hydrogen energy research, development, and manufacturing to help move Hawaii's economy toward energy self-sufficiency;
  - (2) Providing transportation and generation fuel at competitive prices as compared to importation alternatives;
  - (3) Reducing the cost of doing business in Hawaii by lowering the cost of energy and transportation;
  - (4) Speeding up the goal of creating a "hydrogen highway" on the island of Hawaii and making full use of the appropriated hydrogen fund passed by the legislature during the regular session of 2006; and
  - (5) Assisting the State, county of Hawaii, and the federal government to meet their goals and mandates for energy efficiency and renewable energy use.

SECTION 3. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 4. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$50,000,000, in one or more series, for the purpose of assisting H2 Technologies Incorporated or a partnership in which H2 Technologies Incorporated is a general partner, or a

newly-formed LLC in which H2 Technologies Incorporated is a managing member or the successor in interest or an assignee of H2 Technologies Incorporated for the construction of a hydrogen generation appliance research, development, and manufacturing facility and laboratory and a gasoline- or diesel-to-hydrogen automobile conversion garage on the island of Hawaii.

The legislature hereby finds and determines that hydrogen generation appliance research, development, and manufacturing and gasoline- or diesel-to-hydrogen automobile conversion constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 5. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 6. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2013, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 4 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 4. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 7. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2013.

SECTION 8. This Act shall take effect on July 1, 2008.

(Approved May 27, 2008.)

**ACT 117**

S.B. NO. 2040

A Bill for an Act Relating to Cancer Surveillance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that surveillance of cancer incidence and survival to assist individuals to make informed decisions is but one of eight goals of the Hawaii comprehensive cancer control coalition to advance cancer control in Hawaii. The other seven goals revolve around the following issues:

- (1) Prevention, primarily through education and behavioral change;
- (2) Early detection and assurance of coordination with cancer management services;
- (3) Treatment with the most current and effective treatments available;
- (4) Quality-of-life enhancement for all cancer survivors;
- (5) Research to advance the capabilities in Hawaii for prevention, early detection, treatment, and quality of life;
- (6) Uniform access to cancer services; and
- (7) Adequate insurance.

However, several obstacles impede the fulfillment of the goal of cancer incidence and survival surveillance. First, the Hawaii Tumor Registry is currently unable to contact cancer survivors in Hawaii directly to educate them on the work of the Hawaii Tumor Registry for cancer research. Second, it is unclear under existing law that the collection of data on pre-cancerous conditions is permissible. Third, the collection of biological specimens that may assist in cancer prognosis and outcome is also uncertain under existing law.

The purpose of this Act is to remove the obstacles impeding the fulfillment of the goals of cancer incidence and survival surveillance by:

- (1) Allowing a cancer patient to be contacted directly, without initial physician contact, to inform the patient that the patient is registered in the state cancer surveillance and registration program;
- (2) Adding “pre-cancerous” to the conditions about which data collection is authorized to monitor cancer screening activities and the efficacy of cancer vaccines; and
- (3) Adding “biological specimens” to the materials that may be collected to assist in research efforts to reduce, mitigate, and ameliorate the morbidity and mortality of cancer in Hawaii.

SECTION 2. Section 321-43, Hawaii Revised Statutes, is amended to read as follows:

**“§321-43 Statistical activities.** The department of health shall engage in the collection and analysis of statistical information on the morbidity and mortality of cancer in the [State:] state. The morbidity data may be collected in cooperation with the [~~Hawaii state medical association~~] University of Hawaii, Hawaii Medical Association, and the Hawaii cancer society. All data collected by a cooperating agency may be shared with the department of health in the form specified by the department of health. The mortality data as collected from death certificates shall be analyzed by the staff of the department in order to determine the significance of cancer in the [State] state by race, sex, age, occupation, site in the body, and in any other way found desirable for the purpose of determining the areas where greatest emphasis should be laid in the statewide cancer control program. The morbidity data shall be used [in]:

- (1) In determining the prognosis and chance of cure, as well as the number of persons cured of cancer in the [State; ~~for~~] state;
- (2) For assisting in the direction of tumor research; [~~for~~]
- (3) For determining, if possible, the tendencies of benign tumors to become malignant; [~~and for~~]
- (4) For assisting in the follow-up of diagnosed or treated tumor cases as requested by attending physicians[.]; and
- (5) For improving the reporting of the cause of death on death certificates.

All statistical material collected under this section shall be considered confidential as to the names of persons or physicians concerned, except that researchers may use the names of [such] those persons when requesting additional information for research studies when [such] the studies have been approved by the cancer commission of the [~~Hawaii medical association.~~] Hawaii Medical Association and the appropriate federally authorized human subjects protection board.”

SECTION 3. Section 324-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person, public or private medical facility, or social or educational agency, may provide information, interviews, reports, statements, memoranda, biological specimens, or other data or relevant material relating to individuals with



cancer or pre-cancerous conditions to the Hawaii Tumor Registry. This information may be used in the course of any cancer research study approved by the cancer commission of the Hawaii Medical Association~~[-]~~ and the appropriate federally authorized human subjects protection board.”

SECTION 4. Section 324-22, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The identity~~[-]~~ or any group of facts ~~[which]~~ that tends to lead to the identity~~[-]~~ of any person whose condition or treatment has been studied shall be confidential and shall not be revealed in any report or any other matter prepared, released, or published. Researchers ~~[may]~~, however, may use the names of persons when requesting additional information for research studies after being approved by the cancer commission~~[-]; provided that when a request for additional information is to be made directly from a patient, the researcher shall first obtain approval for such request from the patient’s attending physician.]~~ of the Hawaii Medical Association and the appropriate federally authorized human subjects protection board.

(c) The use of ~~[such]~~ additional information obtained by researchers shall also be governed by subsection (a) and, in addition, where the patient is still living and the information is to be obtained directly from the patient, the researcher shall first obtain the approval of the patient~~[-]~~ or the patient’s immediate family, including a reciprocal beneficiary ~~[-or attending physician]~~, in that order of priority.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 27, 2008.)

**ACT 118**

S.B. NO. 3001

A Bill for an Act Relating to Energy Efficiency.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to clarify chapter 269, part VII, Hawaii Revised Statutes, relating to the administration and use of moneys supporting energy-efficiency and demand-side management programs and services.

SECTION 2. Chapter 269, part VII, Hawaii Revised Statutes, is amended to read as follows:

**“~~[H]PART VII. PUBLIC BENEFITS ~~[FUND]~~ FEE~~**

**~~[H]§269-121[H] Public benefits ~~[funds]~~ fee authorization.~~** (a) The public utilities commission, by order or rule, may ~~[redirect]~~ require that all or a portion of the ~~[funds]~~ moneys collected by Hawaii’s electric utilities from its ratepayers through ~~[the current]~~ a demand-side management surcharge [by Hawaii’s electric utilities into a public benefits fund that may be established by the public utilities commission.] be transferred to a third-party administrator contracted by the public utilities commission. The moneys transferred shall be known as the public benefits fee.

(b) ~~[If the public utilities commission establishes a public benefits fund, the surcharge shall be known as the public benefits fee. Moneys in the fund shall be ratepayer funds that]~~ The public benefits fee shall be used to support energy-efficiency and demand-side management programs and services, subject to the review and ap-

proval of the public utilities commission. These moneys shall not be available to meet any current or past general obligations of the State[-]; provided that the State may participate in any energy-efficiency or demand-side management programs and services on the same basis as any other electric consumer.

(c) Nothing in this section shall create or be construed to cause the public benefits fee to be considered state or public moneys subject to appropriation by the legislature or be required to be deposited into the state treasury.

**[H§269-122(H)] Public benefits ~~[fund]~~ fee administrator; establishment.**

(a) ~~[If the] The public utilities commission [establishes a public benefits fund, the public utilities commission shall appoint a fund] may contract with a third-party administrator, to operate and manage any programs established under section 269-121. The administrator shall not be deemed to be a “governmental body” as defined in section 103D-104; provided that all moneys transferred to the third-party administrator shall be comprised solely of public benefit fees collected pursuant to section 269-121. The ~~[fund]~~ administrator shall not expend more than ten per cent of the ~~[fund]~~ collected public benefits fees in any fiscal year, or other reasonable percentage determined by the public utilities commission, for administration of the programs established under section 269-121.~~

(b) ~~The ~~[fund]~~ public benefits fee administrator shall be subject to regulation by the public utilities commission[-, including pursuant to] under any provision applicable to a public utility in sections 269-7, 269-8, 269-8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and 269-28, and shall report to the public utilities commission on a regular basis. Notwithstanding any other provision of law to the contrary, the ~~[fund]~~ public benefits fee administrator shall not be an electric public utility or an electric public utility affiliate.~~

**[H§269-123(H)] Requirements for the public benefits ~~[fund]~~ fee administrator.** (a) Any ~~[fund]~~ public benefits fee administrator ~~[appointed] contracted~~ pursuant to section 269-122 shall satisfy the qualification requirements established by the public utilities commission by rule or order. These requirements may include experience and expertise in:

- (1) Energy-efficient and renewable energy technologies and methods; and
- (2) Identifying, developing, administering, and implementing demand-side management and energy-efficiency programs.

(b) The ~~[fund]~~ public benefits fee administrator’s duties and responsibilities shall be established by the public utilities commission by rule or order, and may include:

- (1) Identifying, developing, administering, promoting, implementing, and evaluating programs, methods, and technologies that support energy-efficiency and demand-side management programs;
- (2) Encouraging the continuance or improvement of efficiencies made in the production, delivery, and use of energy-efficiency and demand-side management programs and services;
- (3) Using the energy-efficiency expertise and capabilities that have developed or may develop in the ~~[State] state~~ and consulting with state agency experts;
- (4) Promoting program initiatives, incentives, and market strategies that address the needs of persons facing the most significant barriers to participation;
- (5) Promoting coordinated program delivery, including coordination with electric public utilities regarding the delivery of low-income home energy assistance, other demand-side management or energy-efficiency programs, and any utility programs;
- (6) Consideration of innovative approaches to delivering demand-side management and energy-efficiency services, including strategies to en-

courage ~~[third party]~~ third-party financing and customer contributions to the cost of demand-side management and energy-efficiency services; and

- (7) Submitting, to the public utilities commission for review and approval, a multi-year budget and planning cycle that promotes program improvement, program stability, and maturation of programs and delivery resources.

~~[[§269-124]]~~ **Transitioning from utility demand-side management programs to the public benefits ~~[fund]~~ fee.** If the public utilities commission establishes a public benefits ~~[fund]~~ fee pursuant to section 269-121, the public utilities commission shall:

- (1) Develop a transition plan that ensures that:
  - (A) Utility demand-side management programs are continued, to the extent practicable, until the transition date; and
  - (B) The ~~[fund]~~ public benefits fee administrator will be able to provide demand-side management and energy-efficiency services on the transition date;
- (2) Encourage programs that allow all retail electricity customers, including state and county agencies, regardless of the retail electricity or gas provider, to have an opportunity to participate in and benefit from a comprehensive set of cost-effective demand-side management and energy-efficiency programs and initiatives designed to overcome barriers to participation;
- (3) Encourage programs, measures, and delivery mechanisms that reasonably reflect current and projected utility integrated resource planning, market conditions, technological options, and environmental benefits;
- (4) Facilitate the delivery of these programs as rapidly as possible, taking into consideration the need for these services and cost-effective delivery mechanisms;
- (5) Consider the unique geographic location of the ~~[State]~~ state and the high costs of energy in developing programs that will promote technologies to advance energy efficiency and use of renewable energy and permit the ~~[State]~~ state to take advantage of activities undertaken in other states, including the opportunity for multi-state programs;
- (6) Require the ~~[fund]~~ public benefits fee administrator ~~[appointed]~~ contracted by the public utilities commission under section 269-122 to deliver programs in an effective, efficient, timely, and competent manner and to meet standards that are consistent with state policy and public utilities commission policy; and
- (7) Before January 2, 2008, and every three years thereafter, require verification by an independent auditor of the reported energy and capacity savings and incremental renewable energy production savings associated with the programs delivered by the ~~[fund]~~ public benefits fee administrator ~~[appointed]~~ contracted by the public utilities commission to deliver energy-efficiency and demand-side management programs under section 269-121.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved May 28, 2008.)

## ACT 119

S.B. NO. 1491

A Bill for an Act Relating to Controlled Substances.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. The legislature finds that the department of public safety charges fees relating to the registration and control of the manufacture, distribution, prescription, and dispensing of controlled substances within this state. The department also collects fees from manufacturers, wholesalers, retailers, and other persons who sell, transfer, or otherwise furnish certain chemicals that are precursors to controlled substances. Fees are also collected from patients qualified for the medical use of marijuana. All of these fees are deposited into the controlled substance registration revolving fund established under section 329-59, Hawaii Revised Statutes.

The legislature also finds that one of the criteria used by the auditor in evaluating special or revolving funds is the extent to which the fund reflects a clear link between the benefit sought and charges made upon the users or beneficiaries of the program, as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriations process. Use of the controlled substance registration revolving fund to offset the cost of regulating those who make payments into the fund meets the criterion used by the auditor to evaluate special and revolving funds.

The purpose of this part is to authorize the director of public safety to offset the cost of investigating violations of chapter 329, Hawaii Revised Statutes, the Uniform Controlled Substances Act, including funding operations of the narcotics enforcement division's forensic drug laboratory facility, with money appropriated from the controlled substance registration revolving fund.

SECTION 2. Section 329-59, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the state treasury the controlled substance registration revolving fund. The fund shall be expended at the discretion of the director of public safety for the purpose of:

- (1) Offsetting the cost of the electronic prescription accountability system, investigation of violations of this chapter, the registration and control of the manufacture, distribution, prescription, and dispensation of controlled substances and regulated chemicals listed under section 329-61, within the [State] state and the processing and issuance of a patient registry identification certificate designated under part IX; and
- (2) Funding positions authorized by the legislature by law[-:]; and
- (3) Funding the narcotics enforcement division's forensic drug laboratory facility.”

## PART II

SECTION 3. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Depressants. Unless specifically excepted, the schedule shall include any material, compound, mixture, or preparation which contains any quantity of the substance:

- (1) Mecloqualone; or
- (2) Methaqualone.”

SECTION 4. Section 329-16, Hawaii Revised Statutes, is amended to read as follows:

“§329-16 **Schedule II.** (a) The controlled substances listed in this section are included in schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:
  - (A) Raw opium;
  - (B) Opium extracts;
  - (C) Opium fluid;
  - (D) Powdered opium;
  - (E) Granulated opium;
  - (F) Codeine;
  - (G) Ethylmorphine;
  - (H) Etorphine hydrochloride;
  - (I) Hydrocodone;
  - (J) Hydromorphone;
  - (K) Metopon;
  - (L) Morphine;
  - (M) Oxycodone;
  - (N) Oxymorphone; and
  - (O) Thebaine;
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;
- (3) Opium poppy and poppy straw;
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions which do not contain cocaine or ecgonine; cocaine or any salt or isomer thereof; and
- (5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy).

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk Dextropropoxyphene (nondosage form);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alphaacetylmethadol (LAAM);
- (12) Levomethorphan;

- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (18) Pethidine (Meperidine);
- (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanyl; and
- (27) Sufentanyl.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system[:-], including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital;
- (4) Phencyclidine;
- ~~(5) Phencyclidine immediate precursors:~~
  - (A) ~~1-phenylcyclohexylamine;~~
  - (B) ~~1-piperidino-cyclohexanecarbonitrile (PCC);]~~ and
- ~~(6) (5) Secobarbital.~~

(e) Stimulants. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a danger or probable danger associated with a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers[:-];
- (3) Phenmetrazine and its salts; and
- (4) Methylphenidate.

~~(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a stimulant effect on the central nervous system:~~

- ~~(1) Phenmetrazine and its salts;~~
- ~~(2) Phenylacetone (P2P);~~
- ~~(3) Methylphenidate.]~~

(f) Immediate precursor. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine:
  - (A) Phenylacetone, phenyl-2-propanone(P2P), benzyl methyl ketone, methyl benzyl ketone.

or

- (2) Immediate precursors to phencyclidine (PCP):
  - (A) 1-phenylcyclohexylamine; and
  - (B) 1-piperidinocyclohexanecarbonitrile(PCC).
- (g) Hallucinogenic substances, unless listed in another schedule, shall include:
  - (1) Nabilone.”

SECTION 5. Section 329-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Depressants. Any material, compound, mixture, or preparation which contains any quantity of the following substances ~~[having]~~, including its salts, isomers, esters, ethers, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, that has a degree of danger or probable danger associated with a depressant effect on the central nervous system:

- (1) Alprazolam;
- (2) Barbitol;
- (3) Bromazepam;
- (4) Butorphanol;
- (5) Camazepam;
- (6) Carisoprodol;
- (7) Chloral betaine;
- (8) Chloral hydrate;
- (9) Chlordiazepoxide;
- (10) Clobazam;
- (11) Clonazepam;
- (12) Clorazepate;
- (13) Clotiazepam;
- (14) Cloxazolam;
- (15) Delorazepam;
- (16) Dichloralphenazone (Midrin);
- (17) Diazepam;
- (18) Estazolam;
- (19) Ethchlorvynol;
- (20) Ethinamate;
- (21) Ethyl loflazepate;
- (22) Fludiazepam;
- (23) Flunitrazepam;
- (24) Flurazepam;
- (25) Halazepam;
- (26) Haloxazolam;
- (27) Ketazolam;
- (28) Loprazolam;
- (29) Lorazepam;
- (30) Lormetazepam;
- (31) Mebutamate;
- (32) Medazepam;
- (33) Meprobamate;
- (34) Methohexital;
- (35) Methylphenobarbital (mephorbarbital);
- (36) Midazolam;
- (37) Nimetazepam;
- (38) Nitrazepam;
- (39) Nordiazepam;

- (40) Oxazepam;
- (41) Oxazolam;
- (42) Paraldehyde;
- (43) Petrichloral;
- (44) Phenobarbital;
- (45) Pinazepam;
- (46) Prazepam;
- (47) Quazepam;
- (48) Temazepam;
- (49) Tetrazepam;
- (50) Triazolam;
- (51) Zaleplon;
- (52) Zolpidem; and
- (53) Zopiclone (Lunesta).”

SECTION 6. Section 329-22, Hawaii Revised Statutes, is amended to read as follows:

“§329-22 Schedule V. (a) The controlled substances listed in this section are included in schedule V.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and
- (6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers[:

(1) ~~Pyrovalerone~~].

(d) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].”

SECTION 7. Section 329-75, Hawaii Revised Statutes, is amended to read as follows:

“§329-75 Sales of products, mixtures, or preparations containing pseudoephedrine; reporting requirement for wholesalers. (a) Notwithstanding any



other law to the contrary, a pharmacy or retailer may dispense, sell, or distribute to a person without a prescription not more than 3.6 grams per day without regard to the number of transactions, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, as the only active ingredient or in combination with other active ingredients; provided that the pharmacy or retailer complies with the following conditions:

- (1) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area not accessible by customers or the general public, such as behind the counter or in a locked display case and where the seller delivers the product directly into the custody of the purchaser; and
- (2) Any person purchasing or otherwise acquiring any product, mixture, or preparation shall:
  - (A) Produce proper identification containing the photograph, printed name, and signature of the individual obtaining the controlled substance; and
  - (B) Sign a written log, receipt, or other program or mechanism approved by the administrator, showing the date of the transaction, name and address of the person, and the amount of the compound, mixture, or preparation.

No person shall purchase, receive, or otherwise acquire more than nine grams of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine or its salts, isomers, or salts of optical isomers within a thirty-day period, except that this limit shall not apply to any quantity of such product, mixture, or preparation dispensed pursuant to a valid prescription.

~~[(b) The sales restriction in this section, as it applies to products, mixtures, or preparations containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, shall not apply to any products, mixtures, or preparations that are in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient.~~

~~(e)]~~ (b) The department, by rule, may exempt other products from this section, if the administrator finds that the products are not used in the illegal manufacture of methamphetamine or other controlled substances. A manufacturer of a drug product may apply for removal of the product from this section if the product is determined by the administrator to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

~~[(d)]~~ (c) Notwithstanding any other provision of this chapter to the contrary, every wholesaler shall report to the administrator all sales made to any retailer, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, as the only active ingredient or in combination with other active ingredients. The department shall provide a common reporting form that contains at least the following information about the product, mixture, or preparation:

- (1) Generic or other name;
- (2) Quantity sold;
- (3) Date of sale;
- (4) Name and address of the wholesaler; and
- (5) Name and address of the retailer.”

### PART III

SECTION 8. Statutory material to be repealed is bracketed and stricken, except bracketed and not stricken material contained within the name of a substance

listed in section 329-22(d)(1), Hawaii Revised Statutes, in section 6 of this Act is not to be repealed.

SECTION 9. This Act shall take effect upon its approval.

(Approved May 28, 2008.)

## ACT 120

H.B. NO. 2224

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:2-201.5, Hawaii Revised Statutes, is amended to read as follows:

**“§431:2-201.5 Conformity to federal law.** (a) The provisions of Title 42 United States Code section 300gg, et seq., as they relate to group and individual health insurance shall apply to title 24, except:

- (1) Where state law provides greater health benefits or coverage than Title 42 United States Code section 300gg, et seq., state law shall be applicable; and
- (2) This section shall not apply to or affect life insurance, endowment, or annuity contracts, or any supplemental contract thereto, described in section 431:10A-101(4).

(b) The following definitions shall be used when applying Title 42 United States Code section 300gg, et seq.:

“Employee” means an employee who works on a full-time basis with a normal workweek of twenty hours or more.

“Group health issuer” means all persons offering health insurance coverage to any group or association, but shall not include those persons offering benefits exempted from Title I of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 under sections 732(c) and 733(c) of Title I of the Employee Retirement Income Security Act of 1974 and sections 2747 and 2791(c) of the Public Health Service Act.

“Qualifying event” means the date of issuance of a general excise tax license, the loss of a job, a reduction in hours of work, or the exhaustion of the federal Consolidated Omnibus Budget Reconstruction Act continuation coverage that results in a loss of health care coverage.

“Self-employed individual” means a person operating the person’s own business, whether as a sole proprietorship or in any other legally recognized manner in which a person may operate the person’s own business, who has a general excise tax license for that business, and who is registered or licensed by the department of commerce and consumer affairs for that business.

“Small employer” means an employer who employs between one and no more than fifty employees.

(c) All group health issuers shall offer all small group health plans to all small employers whose employees live, work, or reside in the group health issuer’s service areas; provided that ~~the~~:

- (1) The commissioner may exempt a group health issuer if the commissioner determines that the group health issuer does not have the capacity to deliver services adequately to enrollees of additional groups given its obligation to existing employer groups; and ~~[provided further that the]~~
- (2) The commissioner ~~[shall]~~ may exempt from this subsection group health plans offered to small employers that employ only one employee, if the

group health issuer offers the small employer groups at least one small group health plan that meets the requirements of chapter 393, and upon the determination by the commissioner that the group health issuer has the capacity to adequately deliver services to enrollees of the additional groups, subject to its obligations to existing employer groups.

(d) Subject to subsection (e)(1), beginning September 1, 2008, and annually thereafter, all group health issuers shall offer small group health plans to self-employed individuals who live, work, or reside in the group health issuer's service areas; provided that the commissioner may exempt a group health issuer if the commissioner determines that the group health issuer does not have the capacity to deliver services adequately to enrollees of additional groups given its obligation to existing employer groups.

(e) Group health issuers may limit periods of enrollment for self-employed individuals to a minimum of thirty calendar days; provided that:

- (1) Self-employed individuals who experience a qualifying event shall enroll with a group health issuer within thirty days of the qualifying event; and
- (2) Group health issuers shall be allowed to impose a one-year waiting period against self-employed individuals who terminate coverage for any reason. If a self-employed individual terminates coverage and a one-year waiting period is imposed against the individual, a group health issuer need not reenroll the individual until the period of enrollment following the one-year waiting period.

~~[(d)] (f)~~ A group health issuer shall be prohibited from imposing any preexisting condition exclusion.

~~[(e)] (g)~~ The commissioner may adopt rules to implement, clarify, or conform title 24 to Title 42 United States Code section 300gg, et seq.

~~[(f)] (h)~~ The adoption of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, for the purposes of title 24 is not an adoption for any purposes for income taxes under chapter 235.

~~[(g)] (i)~~ The State shall have jurisdiction over any matter that Title 42 United States Code section 300gg, et seq., permits, including jurisdiction over enforcement.

~~[(h)] (j)~~ As used in this section, "small group health plans" means the medical plans currently offered, advertised, or marketed by a group health issuer for small employers."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2008, and shall be repealed on July 1, 2013.

(Approved May 28, 2008.)

## ACT 121

S.B. NO. 3174

A Bill for an Act Relating to Affordable Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the affordable housing crisis continues to be one of the State's most significant and challenging social problems and is a

critical issue for many Hawaii residents. As the cost of home ownership and rentals increases, the State must continue to assist residents to obtain affordable housing.

This Act provides that assistance by increasing the Hula Mae multifamily revenue bond authorization from \$400,000,000 to \$500,000,000.

SECTION 2. Act 291, Session Laws of Hawaii 1980, as amended by Act 304, Session Laws of Hawaii 1996, as amended by Act 185, Session Laws of Hawaii 2004, as amended by Act 231, Session Laws of Hawaii 2007<sup>1</sup>, is amended by amending section 11 to read as follows:

“SECTION 11. **Issuance of revenue bond; amount authorized.** Revenue bonds may be issued by the Hawaii housing finance and development corporation pursuant to part III, chapter 39 and subpart A of part III of chapter 201H, Hawaii Revised Statutes, in an aggregate principal amount not to exceed [~~\$400,000,000,~~] \$500,000,000 at such times and in such amounts as the Hawaii housing finance and development corporation deems advisable for the purpose of undertaking and maintaining any of the housing loan programs under subpart A of part III of chapter 201H, Hawaii Revised Statutes, relating to the funding or purchasing of eligible project loans.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved May 29, 2008.)

#### Note

1. So in original.

## ACT 122

H.B. NO. 2139

A Bill for an Act Relating to Anatomical Gifts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 327, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### “PART . REVISED UNIFORM ANATOMICAL GIFT ACT

**§327-A Short title.** This part may be cited as the “Revised Uniform Anatomical Gift Act.”

**§327-B Definitions.** As used in this part, unless the context otherwise requires:

“Agent” means an individual:

- (1) Authorized to make health care decisions on the principal’s behalf by a power of attorney for health care; or
- (2) Expressly authorized to make an anatomical gift on the principal’s behalf by any other record signed by the principal.

“Anatomical gift” means a donation of all or part of a human body to take effect after the donor’s death for the purposes of transplantation, therapy, research, or education.

“Body part” means an eye or other organ, or tissue of a human being. The term shall not include the whole body.

“Decedent” means a deceased individual whose body or body part is or may be the source of an anatomical gift. The term includes a stillborn infant, and subject to restrictions imposed by law other than this part, a fetus.

“Disinterested witness” means a witness other than the spouse, reciprocal beneficiary, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term shall not include a person to which an anatomical gift could pass under section 327-K.

“Document of gift” means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver’s license, identification card, or donor registry.

“Donor” means an individual whose body or body part is the subject of an anatomical gift.

“Donor registry” means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

“Driver’s license” means a license or permit issued by a state or county authority to operate a vehicle whether or not conditions are attached to the license or permit.

“Eye bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

“Guardian” means a person appointed by a court to make decisions regarding the support, care, education, health, and welfare of an individual. The term shall not include a guardian ad litem.

“Hospital” means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

“Identification card” means an identification card issued by a state or county authority or a driver’s license issued by the examiner of drivers.

“Know” means to have actual knowledge.

“Organ procurement organization” means a person designated by the United States Secretary of Health and Human Services as an organ procurement organization.

“Parent” means a parent whose parental rights have not been terminated.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Physician” means an individual authorized to practice medicine or osteopathy under the law of any state.

“Procurement organization” means an eye bank, organ procurement organization, or tissue bank.

“Prospective donor” means an individual who is dead or near death and has been determined by a procurement organization to have a body part that could be medically suitable for transplantation, therapy, research, or education. The term shall not include an individual who has made a refusal.

“Reasonably available” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

“Recipient” means an individual into whose body a decedent’s body part has been or is intended to be transplanted.

“Reciprocal beneficiary” means a party to a valid reciprocal beneficiary relationship as defined in chapter 572C.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Refusal” means a record created under section 327-G that expressly states an intent to bar other persons from making an anatomical gift of an individual’s body or body part.

“Sign” means, with the present intent to authenticate or adopt a record:

- (1) To execute or adopt a tangible symbol; or
- (2) To attach or logically associate with the record an electronic symbol, sound, or process.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Technician” means an individual determined to be qualified to remove or process body parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

“Tissue” means a portion of the human body other than an organ or an eye. The term shall not include blood unless the blood is donated for research or education.

“Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

“Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

**§327-C Applicability.** This part applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

**§327-D Who may make an anatomical gift before donor’s death.** Subject to section 327-H, an anatomical gift of a donor’s body or body part may be made during the life of the donor for transplantation, therapy, research, or education in the manner provided in section 327-E by:

- (1) The donor, if the donor is at least eighteen years of age or is under eighteen years of age and is:
  - (A) An emancipated minor, as deemed pursuant to section 577-25; or
  - (B) Authorized under a state law to apply for a driver’s license under part VI of chapter 286;
- (2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (3) A parent of the donor, if the donor is under eighteen years of age and not emancipated; or
- (4) The donor’s guardian.

**§327-E Manner of making an anatomical gift before donor’s death.** (a) A donor may make an anatomical gift:

- (1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor’s driver’s license or identification card;
- (2) In a will; or
- (3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two other individuals who are at least eighteen years of age, one of whom is a disinterested witness.

(b) A donor or other person authorized to make an anatomical gift under section 327-D may make a gift by a donor card or other record signed by the donor or other person making the gift, or by authorizing that a statement or symbol indicat-

ing that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or the other person and shall:

- (1) Be witnessed by at least two other individuals who are at least eighteen years of age, one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
- (2) State that it has been signed and witnessed as provided in paragraph (1).
- (c) Revocation, suspension, expiration, or cancellation of the driver's license or identification card issued to a donor shall not invalidate an anatomical gift.
- (d) An anatomical gift made by a will shall take effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death shall not invalidate the gift.

**§327-F Amending or revoking an anatomical gift before donor's death.**

(a) Subject to section 327-H, a donor or other person authorized to make an anatomical gift under section 327-D may amend or revoke an anatomical gift by:

- (1) A record signed by:
  - (A) The donor;
  - (B) The other person; or
  - (C) Subject to subsection (b), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign;

or

- (2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.
- (b) A record signed pursuant to subsection (a)(1)(C) shall:

- (1) Be witnessed by at least two other individuals who are at least eighteen years of age, one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
- (2) State that it has been signed and witnessed as provided in paragraph (1).

(c) Subject to section 327-H, a donor or other person authorized to make an anatomical gift under section 327-D may revoke the gift by the destruction or cancellation of the document of gift, or a portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two other individuals who are at least eighteen years of age, one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a).

**§327-G Refusal to make an anatomical gift and effect of refusal.**

(a) An individual may refuse to make an anatomical gift of the individual's body or body part by:

- (1) A record signed by:
  - (A) The individual; or
  - (B) Subject to subsection (b), another individual acting at the direction of the individual if the individual is physically unable to sign;
- (2) The individual's will whether or not the will is admitted to probate or invalidated after the individual's death; or

- (3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two other individuals who are at least eighteen years of age, one of whom is a disinterested witness.
- (b) A record signed pursuant to subsection (a)(1)(B) shall:
  - (1) Be witnessed by at least two other individuals who are at least eighteen years of age, one of whom is a disinterested witness, who have signed at the request of the individual; and
  - (2) State that it has been signed and witnessed as provided in paragraph (1).
- (c) An individual may amend or revoke a refusal:
  - (1) In the manner provided in subsection (a) for making a refusal;
  - (2) By subsequently making an anatomical gift pursuant to section 327-E that is inconsistent with the refusal; or
  - (3) By the destruction or cancellation of the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.
- (d) Except as otherwise provided in section 327-H(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or a body part bars all other persons from making an anatomical gift of the individual's body or the body part.

**§327-H Preclusive effect of an anatomical gift, amendment, or revocation.** (a) Except as otherwise provided in subsection (g), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or body part if the donor made an anatomical gift of the donor's body or body part under section 327-E, or an amendment to an anatomical gift of the donor's body or the body part under section 327-F.

(b) A donor's revocation of an anatomical gift of the donor's body or a body part under section 327-F is not a refusal and shall not bar another person specified in section 327-D or 327-I from making an anatomical gift of the donor's body or a body part under section 327-E or 327-J.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or a body part under section 327-E, or an amendment to an anatomical gift of the donor's body or a body part under section 327-F, another person may not make, amend, or revoke the gift of the donor's body or body part under section 327-J.

(d) A revocation of an anatomical gift of the donor's body or a body part under section 327-F by a person other than the donor shall not bar another person from making an anatomical gift of the body or a body part under section 327-E or 327-J.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 327-D, an anatomical gift of a body part is neither a refusal to give another body part nor a limitation on the making of an anatomical gift of another body part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 327-D, an anatomical gift of a body part for one or more of the purposes set forth in section 327-D is not a limitation on the making of an anatomical gift of the body part for any of the other purposes by the donor or any other person under section 327-E or 327-J.

(g) If a donor who is an unemancipated minor dies under eighteen years of age, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or body part.



(h) If an unemancipated minor who signed a refusal dies under eighteen years of age, a parent of the individual who is reasonably available may revoke the individual's refusal.

**§327-I Who may make an anatomical gift of decedent's body or body part.** (a) Subject to subsections (b) and (c) and unless barred by subsection (d), an anatomical gift of a decedent's body or body part for purposes of transplantation, therapy, research, or education may be made, in the order of priority listed, by any member of the following classes of persons who is reasonably available:

- (1) An agent of the decedent at the time of death who could have made an anatomical gift under section 327-D(2) immediately before the decedent's death;
- (2) The spouse or reciprocal beneficiary of the decedent;
- (3) Adult children of the decedent;
- (4) Parents of the decedent;
- (5) Adult siblings of the decedent;
- (6) Adult grandchildren of the decedent;
- (7) Grandparents of the decedent;
- (8) An adult who exhibited special care and concern for the decedent;
- (9) The persons who were acting as the guardian of the person of the decedent at the time of death; and
- (10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift can pass under section 327-K knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) No person may make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

(d) An anatomical gift may not be made if doing so is barred by section 327-G or 327-H.

**§327-J Manner of making, amending, or revoking an anatomical gift of decedent's body or body part.** (a) A person authorized to make an anatomical gift under section 327-I may make an anatomical gift by a document of gift signed by the person making the gift or that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c), an anatomical gift by a person authorized under section 327-I may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 327-I may be amended or revoked only if a majority of the reasonably available members of that class agree to the amending or revoking of the gift or they are equally divided as to whether to amend or revoke an anatomical gift.

(c) A revocation under subsection (b) is effective only if the procurement organization or transplant hospital or the physician or technician knows of the revocation before an incision has been made to remove a body part from the donor, or before invasive procedures have begun to prepare the recipient.

**§327-K Persons that may receive anatomical gift; purpose of anatomical gift.** (a) An anatomical gift of a body or body part may be made to the following persons:

- (1) A named hospital, accredited medical school, dental school, college, university, or organ procurement organization, or other appropriate person for research or education;
- (2) A named individual designated by the person making the anatomical gift if the individual is the recipient of the body part; or, if the body part for any reason cannot be transplanted into the individual, the body part shall pass in accordance with subsection (f) in the absence of an express, contrary indication by the person making the anatomical gift; or
- (3) A named eye bank or tissue bank.

(b) If an anatomical gift of one or more specific body parts or of all body parts is made in a document of gift that does not name a person described in subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules shall apply:

- (1) If the body part is an eye and the gift is for transplantation or therapy, the gift shall pass to the appropriate eye bank;
- (2) If the body part is tissue and the gift is for transplantation or therapy, the gift shall pass to the appropriate tissue bank;
- (3) If the body part is an organ and the gift is for transplantation or therapy, the gift shall pass to the appropriate organ procurement organization as custodian of the organ; and
- (4) If the body part is an organ, an eye, or tissue and the gift is for research or education, the gift shall pass to the appropriate procurement organization.

(c) For the purpose of subsection (h), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy if suitable for those purposes and, if the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(d) If an anatomical gift of one or more specific body parts is made in a document of gift that does not name a person described in subsection (a) and does not identify the purpose of the gift, the decedent's body parts may be used only for transplantation or therapy, and the gift shall pass in accordance with subsection (f).

(e) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the decedent's body parts may be used only for transplantation or therapy, and the gift shall pass in accordance with subsection (f).

(f) For purposes of subsections (a)(2), (c), and (d), the following rules shall apply:

- (1) If the body part is an eye, the gift shall pass to the appropriate eye bank;
- (2) If the body part is tissue, the gift shall pass to the appropriate tissue bank; and
- (3) If the body part is an organ, the gift shall pass to the appropriate organ procurement organization as custodian of the organ.

(g) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (a)(2), shall pass to the organ procurement organization as custodian of the organ.

(h) If an anatomical gift does not pass pursuant to subsections (a) through (g), or the decedent's body or body part is not used for transplantation, therapy, research,

or education, custody of the body or body part shall pass to the person under obligation to dispose of the body or body part.

(i) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 327-E or 327-J or if the person knows that the decedent made a refusal under section 327-G that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(j) Except as otherwise provided in subsection (a)(2), nothing in this part shall affect the allocation of organs for transplantation or therapy.

**§327-L Search and notification.** (a) The following persons shall make a reasonable search of an individual who the searcher reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

- (1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and
- (2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a)(1) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

**§327-M Delivery of document of gift not required; right to examine.** (a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 327-K.

**§327-N Rights and duties of procurement organization and others.** (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of any donor registry and records of the state or county department of motor vehicles that it knows exist for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization shall be allowed reasonable access to information in the records of the state or county department of motor vehicles to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a body part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the body part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent or the attending physician has determined that continuing these measures would not be consistent with generally accepted standards of care for terminally ill patients.

(d) Unless prohibited by law other than this part, at any time after a donor's death, the person to which a body part passes under section 327-K may conduct any

reasonable examination necessary to ensure the medical suitability of the body or body part for its intended purpose.

(e) Unless prohibited by law other than this part, an examination under subsection (c) or (d) may include an examination of all medical records of the donor or prospective donor.

(f) If a donor, at the time of death, is under eighteen years of age, a procurement organization shall conduct a reasonable search for the parents of the donor and, unless the procurement organization knows the donor is an emancipated minor as deemed by section 577-25, provide the parents with an opportunity to revoke or amend the anatomical gift or revoke a refusal.

(g) A procurement organization shall make a reasonable search for any person listed in section 327-I having priority to make an anatomical gift on behalf of a prospective donor.

(h) If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(i) Subject to sections 327-K(h) and 327-W, the rights of the person to which a body part passes under section 327-K are superior to rights of all others with respect to the body part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this part, a person that accepts an anatomical gift of an entire body may allow embalming or cremation and use of remains in a funeral service. If the gift is of a body part, the person to which the body part passes under section 327-K, upon the death of the donor and before embalming or cremation, shall cause the body part to be removed without unnecessary mutilation.

(j) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a body part from the decedent.

(k) A physician or technician may remove a donated body part from the body of a donor that the physician or technician is qualified to remove.

**§327-O Coordination of procurement and use.** Each hospital in this state, after consultation with procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and body parts.

**§327-P Sale or purchase of body parts prohibited.** (a) Except as otherwise provided in subsection (b), a person that knowingly, for valuable consideration, purchases or sells a body part for transplantation or therapy if removal of a body part from an individual is intended to occur after the individual's death commits a class C felony and upon conviction is subject to a fine not exceeding \$50,000, imprisonment not exceeding five years, or both.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a body part.

**§327-Q Penalty.** Any person that, to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal to make an anatomical gift commits a class C felony and upon conviction is subject to a fine not exceeding \$50,000, imprisonment not exceeding five years, or both.

**§327-R Immunity.** (a) A person that acts in accordance with this part or with the applicable anatomical gift law of another state or attempts in good faith to

do so is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) A person who documents the making, amending, or revoking of an anatomical gift under this part may rely upon representations of the individuals listed in section 327-I(a)(2),(3), (4), (5), (6), (7), and (8) relating to their relationship to the donor or prospective donor unless the person knows that the representation is untrue.

**§327-S Law governing validity; choice of law as to execution of document of gift; presumption of validity.** (a) A document of gift shall be valid if executed in accordance with:

- (1) This part;
- (2) The laws of the state or country where it was executed; or
- (3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the laws of this State govern the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

**§327-T Donor registry.** (a) The examiner of drivers shall adopt rules pursuant to chapter 91 to allow an organ procurement organization twenty-four-hour telephone access to the driver's license database information, solely for determining whether a driver has indicated a willingness to be an organ donor pursuant to section 286-109.5.

(b) The examiner of drivers shall cooperate with any donor registry that this State establishes, contracts for, or recognizes for transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.

(c) A donor registry shall:

- (1) Provide a database that allows a donor or other person authorized under section 327-D to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;
- (2) Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and
- (3) Be accessible for purposes of paragraphs (1) and (2) seven-days-a-week on a twenty-four-hour basis.

(d) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or the person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(e) This section shall not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the State. However, the registry shall comply with subsections (c) and (d).

**§327-U Effect of anatomical gift on advance health-care directive.** (a) If a prospective donor has a declaration or advance health-care directive, and the terms of

the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a body part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or if the agent is not reasonably available, another person authorized by law other than this chapter to make health-care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 327-I. Before resolution of the conflict, measures necessary to ensure the medical suitability of the body part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

(b) As used in this section:

"Advance health-care directive" means a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor or a power of attorney for health care.

"Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn.

"Health-care decision" means any decision regarding the health care of the prospective donor.

**§327-V Cooperation between medical examiner or coroner and procurement organization.** (a) A medical examiner or coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for transplantation, therapy, research, or education.

(b) If a medical examiner or coroner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the medical examiner or coroner and a post-mortem examination is going to be performed, unless the medical examiner or coroner denies recovery in accordance with section 327-W, the medical examiner or coroner or designee shall make a reasonable attempt to conduct a post-mortem examination of the body or the body part in a manner and within a period compatible with its preservation for the purposes of the gift.

(c) A body part may not be removed from the body of a decedent under the jurisdiction of a medical examiner or coroner for transplantation, therapy, research, or education unless the body part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the medical examiner or coroner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection shall not preclude a medical examiner or coroner from performing the medicolegal investigation upon the body or body parts of a decedent under the jurisdiction of the medical examiner or coroner.

**§327-W Facilitation of an anatomical gift from a decedent whose body is under the jurisdiction of the medical examiner or coroner.** (a) Upon request of a procurement organization, a medical examiner or coroner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the medical examiner or coroner. If the decedent's body or body part is medically suitable for transplantation, therapy, research, or education, the medical examiner or coroner shall release post-mortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results

or other information received from the medical examiner or coroner only if relevant to transplantation or therapy.

(b) The medical examiner or coroner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner or coroner, which the medical examiner or coroner determines may be relevant to the investigation.

(c) A person that has any information requested by a medical examiner or coroner pursuant to subsection (b) shall provide that information as expeditiously as possible to allow the medical examiner or coroner to conduct the medicolegal investigation within a period compatible with the preservation of body parts for transplantation, therapy, research, or education.

(d) If an anatomical gift has been or might be made of a body part of a decedent whose body is under the jurisdiction of the medical examiner or coroner and a post-mortem examination is not required, or the medical examiner or coroner determines that a post-mortem examination is required but that the recovery of the body part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner or coroner and procurement organization shall cooperate in the timely removal of the body part from the decedent for transplantation, therapy, research, or education.

(e) If an anatomical gift of a body part from the decedent under the jurisdiction of the medical examiner or coroner has been or might be made, but the medical examiner or coroner initially believes that the recovery of the body part could interfere with the post-mortem investigation into the decedent's cause or manner of death, the medical examiner or coroner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. The procurement organization shall provide the medical examiner or coroner with all information it has which could relate to the cause or manner of the decedent's death. After consultation, the medical examiner or coroner may allow the recovery.

(f) Following the consultation under subsection (e), in the absence of mutually agreed-upon protocols to resolve conflict between the medical examiner or coroner and the procurement organization, if the medical examiner or coroner intends to deny recovery of the body part, the medical examiner or coroner or designee, at the request of the procurement organization, shall make reasonable efforts to attend the removal procedure for the body part before making a final determination not to allow the procurement organization to recover the body part. During the removal procedure, the medical examiner or coroner or designee may allow recovery by the procurement organization to proceed, or, if the medical examiner or coroner or designee reasonably believes that the body part may be involved in determining the decedent's cause or manner of death, deny recovery by the procurement organization.

(g) If the medical examiner or coroner or designee denies recovery under subsection (f), the medical examiner or coroner or designee shall include the reasons in the records of the medical examiner or coroner; and make those reasons available to the procurement organization upon request.

(h) If the medical examiner or coroner or designee allows recovery of a body part, the procurement organization shall cooperate with the medical examiner or coroner in any documentation of injuries and the preservation and collection of evidence prior to and during the recovery of the body part and, upon request, shall cause the physician or technician who removes the body part to provide the medical examiner or coroner with a record describing the condition of the body part, a biopsy, a photograph, and any other information and observations that would assist in the post-mortem examination.

**§327-X Hawaii organ and tissue education special fund.** There is established in the state treasury the Hawaii Organ and Tissue Education Special fund. Moneys collected under section 286-109.7 shall be deposited into the fund. The fund shall be administered and distributed by the department of health and shall be used exclusively for public education programs and activities on organ, tissue, and eye donation.

**§327-Y Uniformity of application and construction.** In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**§327-Z Relation to electronic signatures in Global and National Commerce Act.** This part modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 United States Code Section 7001 et. seq., but shall not modify, limit, or supersede Section 101(a) of that Act, 15 United States Code Section 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code Section 7003(b).”

SECTION 2. Section 286-109.6, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§286-109.6[H] Limited access to driver’s license anatomical gift data.** The examiner of drivers shall adopt rules pursuant to chapter 91 to allow an organ procurement organization twenty-four-hour telephone access to the driver’s license database information, solely for the purpose of determining whether a driver has indicated a willingness to be an organ donor pursuant to section 286-109.5.

As used in this section, “organ procurement organization” shall have the same meaning as procurement organization in section [327-4.] 327-B.”

SECTION 3. Section 286-109.7, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§286-109.7[H] Organ and tissue education fee.** Notwithstanding any other law to the contrary, beginning July 1, 2000, a donation of \$1, in addition to any other fees under this chapter, may be collected upon designation by an individual or entity from each certificate of registration by the director of finance of each county to be deposited on a quarterly basis into the [H]organ and tissue education special fund[H] pursuant to section [327-5.6.] 327-X. The counties may retain a portion of the \$1 donation as an administrative fee to cover the cost of collecting, accounting for, and depositing the balance into the organ and tissue education special fund. The retention shall not exceed \$0.20 for each \$1 collected.”

SECTION 4. Chapter 327, part I, Hawaii Revised Statutes, is repealed.

SECTION 5. On the effective date of this Act, the director of finance shall transfer all of the funds in the organ and tissue education special fund established by section 327-5.6, Hawaii Revised Statutes, to the Hawaii organ and tissue education special fund created by section 327-X in section 1 of this Act.

SECTION 6. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.



**ACT 123**

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2008.

(Approved May 29, 2008.)

**ACT 123**

S.B. NO. 2293

A Bill for an Act Relating to Affordable Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 201H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§201H- For-sale developments.** Any law to the contrary notwithstanding, new multi-family for-sale housing condominium developments of seventy-five units or more per acre on privately owned lands and privately financed without federal, state, or county financing assistance or subsidies, including tax credits, shall:

- (1) Be exempt from the corporation’s shared appreciation equity program;
- (2) Be subject to three-year occupancy requirements and transfer restrictions; provided that the three-year occupancy requirement shall begin upon the sale of each unit; and
- (3) Not be subject to the ten-year occupancy requirements and transfer restrictions in sections 201H-47 and 201H-49, respectively;

provided that, in order for paragraphs (1), (2), and (3) to apply, the primary purpose of constructing the new multi-family for-sale housing condominium development of seventy-five units or more per acre shall be to augment the existing affordable housing unit inventory in the State and not for the purpose of satisfying any affordable housing or reserved housing requirement under this chapter, section 206E-4(18), or any other law or ordinance.

As used in this section:

“Affordable housing” means the same as defined under section 201H-57.

“Reserved housing” means the same as defined under section 206E-101.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 2008.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.

**ACT 124**

H.B. NO. 2450

A Bill for an Act Relating to Land Use.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§205- Reclassification of land contiguous to an agricultural district; approval conditions.** (a) Any decision approving a petition for a boundary amendment pursuant to this chapter where lands in the petition area are contiguous or adjacent to lands in the agricultural district, shall include the following conditions in the decision granting approval:

- (1) A prohibition on any action that would interfere with or restrain farming operations; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the agricultural district; and
- (2) Notification to all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under chapter 165, the Hawaii right to farm act, and that the notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

(b) For purposes of this section, “farming operation” shall have the same meaning as provided in section 165-2.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved May 29, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 125**

S.B. NO. 2163

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the No Child Left Behind Act of 2001, Public Law 107-110, sets forth various requirements, which for many states, have created contradictions and misunderstandings about what constitutes a qualified teaching workforce. The legislature further finds that the conflict between state and federal licensure requirements can lead to confusion among teachers and administrators.

The purpose of this Act is to better align Hawaii’s teacher licensure requirements with the criteria for highly qualified teachers as prescribed by the No Child Left Behind Act.

SECTION 2. Section 302A-804, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-804 Powers and duties of the department.** The department shall retain all of its rights and powers except for the authority provided to the board under this subpart. The department’s powers and duties under this subpart shall be limited to:

- (1) Hiring, except in emergency situations as described in this chapter, licensed teachers to teach in their fields of licensing;
- (2) Reporting data annually to the board about the supply of, and demand for, teachers, including the identification of shortage areas, out-of-field teaching assignments, numbers of teachers teaching out-of-field, numbers and types of courses and classes taught by out-of-field teachers, and numbers and types of students taught by out-of-field teachers;
- (3) On an emergency and case-by-case basis, hiring unlicensed individuals; provided that:
  - (A) A list of the names, work sites, teaching assignments, and progress toward licensing of these individuals shall be reported to the board and any changes shall be updated on a monthly basis by the department;
  - (B) There are no properly licensed teachers for the specific assignments for which the individuals are being hired; ~~and~~
  - (C) No individual may be employed by the department on an emergency basis for more than ~~four~~ three years. During this time, the individual ~~must~~ shall demonstrate active pursuit of licensing in each year of employment; and
  - (D) Notwithstanding subparagraph (3)(C), unlicensed individuals who have been hired on an emergency basis prior to July 1, 2008, shall attain licensure no later than four years from the date of their employment;
- (4) Submitting an annual report to the board documenting:
  - (A) The number of emergency hires by subject matter areas and by schools;
  - (B) The reasons and duration of employment for the emergency hiring enumerated in subparagraph (A);
  - (C) Individual progress toward licensing; and
  - (D) The department's efforts to address the shortages described in subparagraph (A); and
- (5) Providing any other information requested by the board that is pertinent to its powers and duties."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that the amendments made to section 302A-804, Hawaii Revised Statutes, under section 2 of this Act shall be repealed on July 1, 2011, and section 302A-804, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Approved May 29, 2008.)

**ACT 126**

S.B. NO. 2433

A Bill for an Act Relating to Iolani Palace.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 6E-35, Hawaii Revised Statutes, is amended to read as follows:

“§6E-35 **Iolani Palace.** (a) The official designation of the palace of the former monarchs of Hawaii shall be Iolani Palace.

(b) The official designation of the Friends of Iolani Palace shall be the State of Hawaii Museum of Monarchy History. The qualifying standards and conditions related to the receipt of funds under chapter 42F shall not apply to funds received by the State of Hawaii Museum of Monarchy History; provided that if the museum contracts with a recipient or provider, then the qualifying standards, conditions, and other provisions of chapter 42F shall apply to the recipient or provider and the contract.

(c) To receive state funds, the State of Hawaii Museum of Monarchy History shall:

- (1) Be licensed or accredited, in accordance with federal, state, or county statutes, rules, or ordinances, to conduct the activities or provide the services for which funds are appropriated;
- (2) Comply with all applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, sexual orientation, or disability;
- (3) Agree not to use the funds for entertainment or lobbying activities;
- (4) Be incorporated under the laws of the State;
- (5) Have bylaws or policies that describe the manner in which the activities or services for which a grant or subsidy is awarded shall be conducted or provided;
- (6) Have been determined and designated to be a tax-exempt organization by the Internal Revenue Service; and
- (7) Have a governing board whose members shall have no material conflict of interest and serve without compensation.

~~(e)~~ (d) The comptroller and state auditor shall have the authority to examine the use of funds appropriated to the State of Hawaii Museum of Monarchy History.

~~[(d)]~~ (e) The State of Hawaii Museum of Monarchy History shall provide to the legislature an annual report no later than twenty days prior to the convening of each regular session, which shall include an explanation of the facility maintenance and other functions accomplished by state fund expenditures in the previous fiscal year.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 2008.)

## ACT 127

H.B. NO. 3352

A Bill for an Act Relating to an Audit of the Hawaii Disability Rights Center.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Congress created a nationwide protection and advocacy system for individuals with developmental disabilities under the Developmental Disabilities Assistance and Bill of Rights Act, as amended, to aid individuals with developmental disabilities or mental illness and their families in gaining access to appropriate support and services. States are required to designate an agency or entity to provide advocacy services to persons with developmental dis-

abilities and mental illness in order to receive federal funds for programs for these persons.

The legislature notes that the Hawaii Disability Rights Center (Center) is the agency designated under section 333F-8.5, Hawaii Revised Statutes, to provide advocacy services to persons with developmental disabilities or mental illness. Section 333F-8.5(c), Hawaii Revised Statutes, grants the Center access to all records of any person with developmental disabilities or mental illness, to the extent required by federal law. However, there are also federal and state statutes, such as the Health Insurance Portability and Accountability Act, which were enacted to protect the privacy of patient records.

The legislature also finds that there is an ongoing dispute as to whether the law that provides the Center access to records overrides the privacy rights of persons receiving services and their families, with or without the appropriate waivers of these privacy rights, and, if so, what justification is necessary for the Center to demand access to records of persons with disabilities. Providers of services to individuals with disabilities are uncertain as to their obligation to disclose patient records to an entity such as the Center. Concerns have been raised about the Center, its approach to resolving the conflict between a patient’s right to privacy, and its need for access to the patient and the patient’s records.

The legislature also notes that the department of health has jurisdiction over state funding for the Hawaii Disability Rights Center and has responsibility for the performance of the Center. The legislature finds for purposes of this Act that the Center is a “quasi-public institution” within the scope of section 23-4, Hawaii Revised Statutes, because it is supported in whole or in part by and handles state or public funds. Although the Center is therefore subject to regular audits by the auditor, it has never been audited by the auditor.

The purpose of this Act is to direct the auditor to perform a financial and management audit of the Center to protect its vulnerable clientele and to ensure that state funds are being spent in accordance with applicable laws.

SECTION 2. (a) The auditor shall conduct a financial and management audit of the Hawaii Disability Rights Center.

(b) The auditor shall submit a report to the legislature no later than twenty days prior to convening of the regular session 2009, containing findings and recommendations, including any proposed legislation, concerning the Hawaii Disability Rights Center’s handling of state funds and its approach to resolving the conflict between a patient’s right to privacy and its need for access to the patient and the patient’s records.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 29, 2008.)

**ACT 128**

S.B. NO. 3203

A Bill for an Act Relating to Animal Hoarding.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§711- Animal hoarding.** (1) A person commits the offense of animal hoarding if the person intentionally, knowingly, or recklessly:

- (a) Possesses more than twenty dogs, cats, or a combination of dogs and cats;
  - (b) Fails to provide necessary sustenance for each dog or cat; and
  - (c) Fails to correct the conditions under which the dogs or cats are living, where conditions injurious to the dogs', cats', or owner's health and well-being result from the person's failure to provide necessary sustenance.
- (2) Animal hoarding is a misdemeanor.”

SECTION 2. Section 711-1109.1, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) If there is probable cause to believe that a pet animal is being subjected to treatment in violation of section 711-1108.5, 711-1109, [☒] 711-1109.3, or 711-\_\_\_\_ a law enforcement officer, after obtaining a search warrant or in any other manner authorized by law, may enter the premises where the pet animal is located to provide the pet animal with food, water, and emergency medical treatment or to impound the pet animal. If after reasonable effort, the owner or person having custody of the pet animal cannot be found and notified of the impoundment, an impoundment notice shall be conspicuously posted on the premises and within seventy-two hours after posting, the notice shall be sent by certified mail to the address, if any, from which the pet animal was removed.”

SECTION 3. Section 711-1109.2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read as follows:

“(1) If any pet animal is impounded pursuant to section 711-1109.1, prior to final disposition of the criminal charge under section 711-1108.5, 711-1109, [☒] 711-1109.3, or 711-\_\_\_\_, against the pet animal's owner, any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals that is holding the pet animal may file a petition in the criminal action requesting that the court issue an order for forfeiture of the pet animal to the county or to the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.”

2. By amending subsection (3) to read as follows:

“(3) At a hearing conducted pursuant to subsection (2), the petitioner shall have the burden of establishing probable cause that the pet animal was subjected to a violation of section 711-1108.5, 711-1109, [☒] 711-1109.3[~~]~~, or 711-\_\_\_\_. If the court finds that probable cause exists, the court shall order immediate forfeiture of the pet animal to the petitioner, unless the defendant, within seventy-two hours of the hearing:

- (a) Posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the pet animal from the date of initial impoundment to the date of trial; or
- (b) Demonstrates to the court that proper alternative care has been arranged for the pet animal.

Notwithstanding subsection (3)(a), a court may waive, for good cause shown, the requirement that the defendant post a security deposit or bond.”

3. By amending subsection (5) to read as follows:

“(5) No pet animal may be destroyed by a petitioner under this section prior to final disposition of the criminal charge under section 711-1108.5, 711-1109, [☒]

## ACT 129

711-1109.3, or 711- against the pet animal's owner, except in the event that the pet animal is so severely injured that there is no reasonable probability that its life can be saved."

SECTION 4. Section 711-1110.5, Hawaii Revised Statutes, is amended to read as follows:

**"§711-1110.5 Surrender or forfeiture of animals.** Upon conviction, guilty plea, or plea of nolo contendere for any violation of section 711-1108.5, 711-1109, ~~[or]~~ 711-1109.3~~[;]~~, or 711- :

- (1) The court may order the defendant to surrender or forfeit the animal whose treatment was the basis of the conviction or plea to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order; and
- (2) The court also may order the defendant to surrender or forfeit any other animals under the possession, custody, or control of the defendant to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order, if there is substantial evidence that the animals are being abused or neglected.

The court shall order the defendant to reimburse the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for reasonable costs incurred to care, feed, and house any animal that is surrendered or forfeited pursuant to this section."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval and shall be repealed on July 1, 2011.

(Approved May 30, 2008.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 129

H.B. NO. 2204

A Bill for an Act Relating to the Liability of a Firearm Owner.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 663-9.5, Hawaii Revised Statutes, is amended to read as follows:

**"§663-9.5<sup>1</sup> Liability of firearm owners.** (a) The owner of a firearm, if the discharge of the firearm proximately causes either personal injury or property damage to any person, shall be absolutely liable for ~~[such]~~ the damage.

(b) It shall be an affirmative defense to ~~[such]~~ the absolute liability that ~~[the]~~:

- (1) ~~The~~ firearm was not in the possession of the owner ~~[and was]~~;
- (2) ~~The firearm was~~ taken from the owner's possession without the owner's permission; and ~~[the]~~
- (3) ~~The~~ owner either ~~[had reported]~~:
  - (A) Reported the theft to the police prior to the discharge; or~~;~~ ~~[despite]~~
  - (B) Despite the exercise of reasonable care~~[, had]~~:
    - (i) Had not discovered the theft prior to the discharge; or ~~[was]~~
    - (ii) Was not reasonably able to report the theft to the police prior to the discharge.

(c) This section shall not apply when the discharge of the firearm was legally justified.

(d) The absolute liability under subsection (a) shall not apply to the State or counties for the use of a firearm owned by the State or county, as applicable, and used by a law enforcement officer employed by the State or county, outside of the course and scope of employment as a law enforcement officer; provided that this section shall not be construed to relieve the State and counties from any other tort liability that may be applicable to the State or counties."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 30, 2008.)

#### Note

1. Prior to amendment brackets appeared around section number.

## ACT 130

H.B. NO. 3249

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291C-123, Hawaii Revised Statutes, is amended to read as follows:

**"§291C-123 Driving or parking upon bikeway~~[-]; parking penalty.~~ (a)** No person shall drive any vehicle other than a bicycle or moped upon a bicycle lane or bicycle path, except upon a permanent or authorized temporary driveway~~[-]; or park any vehicle upon a bicycle lane or bicycle path;~~ provided that any vehicle may be driven or parked in a bicycle lane or bicycle path as applicable if:

- (1) It is in the process of executing a legal turn, lane change, or parking maneuver;
- (2) It is an authorized emergency vehicle performing the functions under section 291C-26;



- (3) It is an official federal, state, or county vehicle in the performance of its actual duty;
- (4) It is a stalled or broken vehicle;
- (5) It is necessary to assist a stalled or broken vehicle;
- (6) It is necessary to yield to an authorized emergency vehicle pursuant to section 291C-65; or
- (7) It is otherwise provided by law.

(b) Any person violating the parking prohibition in subsection (a) shall be fined not more than \$500."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 30, 2008.)

**ACT 131**

S.B. NO. 2157

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. According to the American College of Physicians, internal medicine section, most pain from disease and chronic conditions can be controlled or even eliminated. For example, even advanced pain can be controlled in 90 to 99 per cent of cases. In nine out of ten cases, physicians can control pain by using pills alone without having to use injections, operations, or other methods. In those few cases in which pain from disease and chronic conditions cannot be eliminated completely, it can be reduced so that the person can live with the pain from day-to-day and still accomplish activities that are important to the person. The American College of Physicians further states that:

- (1) The person with advanced pain from disease and chronic conditions has a right to effective pain control;
- (2) Part of the job of a caregiver is to ensure effective pain control;
- (3) Pain control takes time to achieve, so persistence is vital;
- (4) Only the person with pain knows what the pain is like; and
- (5) Never assume that pain means the underlying medical condition is spreading.

Furthermore, a pain initiative in Texas states that, while alternatives to drug treatment such as biofeedback, hypnosis, and acupuncture can be effective for some types of pain:

- (1) Most pain patients will also require narcotics;
- (2) Addiction is extremely rare when narcotics are used to treat pain from disease and chronic conditions; and
- (3) Virtually all pain from disease and chronic conditions can be relieved.

The legislature finds that Hawaii law should permit pain patients to be prescribed appropriate narcotic pain medication. The legislature further finds that pain patients deserve appropriate medical care that relieves the debilitating and intolerable discomforts of pain as much as possible, so that they can lead normal lives to the greatest extent possible and so that their caregivers can be relieved of stress and anxiety in witnessing the ravaging effects of pain on the quality of life of the pain patient in their care.

The purpose of this Act is to clarify a pain patient's right to be prescribed controlled substances to relieve pain.

SECTION 2. Section 327H-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§327H-2~~]]~~ **Bill of rights.** (a) The pain patient's bill of rights includes the following:

- (1) A patient who suffers from severe acute pain or severe chronic pain has the option to request or reject the use of any or all modalities to relieve the pain;
- (2) A patient who suffers from severe acute pain or severe chronic pain has the option to choose from appropriate pharmacologic treatment options to relieve severe acute pain or severe chronic pain, including opiate medications, without first having to submit to an invasive medical procedure.

For purposes of this paragraph, “invasive medical procedure” means surgery, destruction of a nerve or other body tissue by manipulation, or the implantation of a drug delivery system or device;

- (3) A patient's physician may refuse to prescribe opiate medication for a patient who requests a treatment for severe acute pain or severe chronic pain. However, that physician may inform the patient of physicians who are qualified to treat severe acute pain and severe chronic pain employing methods that include the use of opiates;
- (4) A physician who uses opiate therapy to relieve severe acute pain or severe chronic pain may prescribe a dosage deemed medically necessary to relieve the pain;
- (5) A patient may voluntarily request that the patient's physician provide an identifying notice of the prescription for purposes of emergency treatment or law enforcement identification; and
- (6) With regard to pain patients, the application of this section shall be guided by the medical principle that physical tolerance and dependence are normal consequences of sustained use of opiate medication, distinguishable from psychological dependency or addiction that bears no relationship to pain experienced by a patient. For the purposes of this section, psychological dependency shall be characterized by a patient's compulsion to take a drug notwithstanding the fact that the patient knows the harmful and destructive effect of the drug on the patient. The distinction is one of treatment of pain as opposed to feeding a psychological need. A patient who suffers severe acute pain or severe chronic pain secondary to a diagnosis in any form of disease and chronic conditions may be entitled to receive a prescription of opiate medication for the treatment of the pain, if requested by that patient; provided that:
  - (A) The particular opiate is appropriate to the treatment of that pain; and
  - (B) The patient is not addicted to the opiate. For the purposes of this subparagraph, the term “addicted” refers to a psychological dependence, rather than a progressive physical tolerance for the opiate to relieve the pain; provided that the term does not include a narcotic-dependent person as defined in section 329-40.

~~[(6)]~~ (b) Nothing in this section shall be construed to:

- ~~[(A)]~~ (1) Expand the authorized scope of practice of any licensed physician;

- [(B)] (2) Limit any reporting or disciplinary provisions applicable to licensed physicians and surgeons who violate prescribing practices; and
- [(C)] (3) Prohibit the discipline or prosecution of a licensed physician for:
  - [(A)] (A) Failing to maintain complete, accurate, and current records that document the physical examination and medical history of a patient, the basis for the clinical diagnosis of a patient, and the treatment plan for a patient;
  - [(B)] (B) Writing false or fictitious prescriptions for controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 [U.S.C.] United States Code 801 et seq. or in chapter 329;
  - [(C)] (C) Prescribing, administering, or dispensing pharmaceuticals in violation of the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 [U.S.C.] United States Code 801 et seq. or of chapter 329;
  - [(D)] (D) Diverting medications prescribed for a patient to the licensed physician's own personal use; and
  - [(E)] (E) Causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual; provided that it is not "causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual" to prescribe, dispense, or administer medical treatment for the purpose of treating severe acute pain or severe chronic pain, even if the medical treatment may increase the risk of death, so long as the medical treatment is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason."

SECTION 3. Section 329-38, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A schedule II controlled substance prescription shall:

- (1) Be filled within [~~three~~] seven days following the date the prescription was issued to the patient; and
- (2) Be supplied to a patient only if the prescription has been filled and held by the pharmacy for not more than seven days."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 30, 2008.)

A Bill for an Act Relating to the Hawaii Community Development Authority.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. By establishing the Hawaii community development authority, the legislature sought to provide a mechanism to address vast, unmet community development needs. Specifically, the legislature established the Hawaii community

development authority as a “new and comprehensive authority for community development...to join the strengths of private enterprise, public development and regulation into a new form capable of long-range planning and implementation of improved community development. ...[W]hich shall determine community development programs and cooperate with private enterprise and the various components of federal, state, and county governments in bringing plans to fruition.”

The Hawaii community development authority consists of 13 voting members, two of which were added by the legislature in 2006. Provision was also made for the appointment of additional voting members representing new community development districts designated by the legislature.

It has recently come to the attention of the legislature that the Hawaii community development authority has barred at least two members who represent small business interests within the Kakaako community development district, from voting on matters concerning the development district in which the greatest concentration of small businesses in Kakaako is located. The stated basis for this action is a purported conflict-of-interest based on the Hawaii community development authority’s interpretation of section 84-14(a)(1), Hawaii Revised Statutes. However, the authority’s interpretation and action is contrary to the legislature’s intent in enacting chapter 206E, Hawaii Revised Statutes.

It is the purpose of this Act to remedy this unintended situation by providing for the designation of at least two members of the Hawaii community development authority as representatives of small businesses located in the Kakaako community development district. The designation of these small business representatives would further one of the legislature’s stated intentions in forming the Hawaii community development authority: to address insufficient commercial and industrial facilities for rent.

SECTION 2. Section 206E-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The authority shall consist of thirteen voting members. The director of finance, the director of business, economic development, and tourism, the comptroller, and the director of transportation, or their respective designated representatives shall serve as ex officio, voting members. One member shall be appointed by the governor from a list of not less than three prospective appointees submitted by the president of the senate, and one member shall be appointed by the governor from a list of not less than three prospective appointees submitted by the speaker of the house of representatives. Seven members shall be appointed by the governor for staggered terms pursuant to section 26-34; provided that four members shall be appointed at large and, initially, three members, hereinafter referred to as county members, shall be selected from a list of ten prospective appointees recommended by the local governing body of the county in which the initial designated district is situated; and provided further that when vacancies occur in any of the three positions for which the members were selected from a list of county recommendations, the governor shall fill such vacancies on the basis of one from a list of four recommendations, two from a list of seven recommendations, or three from a list of ten recommendations. The list of recommendations shall be made by the local governing body of the county. Of the nine members appointed either by the governor from the lists provided by the president of the senate and speaker of the house, at-large by the governor, or as county members recommended by the local governing body of the county in which the initial designated district is situated, at least two members shall represent small businesses and shall be designated as the small business representatives on the board whose purpose, among other things, is to vote on matters before the board that affect small businesses. The small business representatives shall be owners or active managers of a small business with its principal place of operation located within the

physical boundaries of the initial designated district. Notwithstanding section 84-14(a), the small business representatives shall not be prohibited from voting on any matter concerning any district under the board's jurisdiction; provided that the matter is not limited to solely benefiting the specific interest of that member and the matter concerns broader interests within the district. If an additional district is designated by the legislature, the total membership of the authority shall be increased as prescribed above by the appointment of three additional members, except as provided for in section 206E-191. Notwithstanding section 92-15, a majority of all members shall constitute a quorum to do business, and the concurrence of a majority of all members shall be necessary to make any action of the authority valid; except that, on any matter relating solely to a specific community development district, the members representing districts other than that specific community development district shall neither vote, nor shall they be counted to constitute a quorum, and concurrence shall be required of a majority of that portion of the authority made up of all ex officio voting members, members at large, and county and district members representing the district for which action is being proposed [~~in order~~] for such action to be valid. All members shall continue in office until their respective successors have been appointed and qualified. Except as herein provided, no member appointed under this subsection shall be an officer or employee of the State or its political subdivisions.

For purpose of this section, "small business" means a business which is independently owned and which is not dominant in its field of operation."

SECTION 3. On the effective date of this Act, the governor shall designate, from among existing Hawaii community development authority members, two of the members eligible pursuant to section 206E-3, Hawaii Revised Statutes, as amended by this Act, to serve as small business representatives on the authority.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 2, 2008.)

## ACT 133

S.B. NO. 2456

A Bill for an Act Relating to Harassment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§711- Harassment by impersonation.** (1) A person commits the offense of harassment by impersonation if that person poses as another person, without the express authorization of that person, and makes or causes to be made, either directly or indirectly, a transmission of any personal information of the person to another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to harass, annoy, or alarm any person.

(2) Harassment by impersonation is a misdemeanor.

(3) For the purposes of this section:

"Personal information" means information associated with an actual person that is a name, an address, a telephone number, or an electronic mail address.

“Pose” means to falsely represent oneself, directly or indirectly, as another person or persons.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 2, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 134

S.B. NO. 1961

A Bill for an Act Relating to Bail.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

### “ARTICLE . BAIL AGENTS; SURETIES

**§431: -A Definitions.** As used in this article:

“Bail agent” means a licensed insurance producer under article 9A who is appointed by an authorized surety insurer, furnishes bail for compensation in any court in this State, and has the power of attorney to execute or countersign bail bonds in connection with judicial proceedings. “Bail agent” shall not include a person who is a full-time salaried officer or employee of an insurer or a person who pledges United States currency, a United States postal money order, a cashier’s check, or other property as security for a bail bond in connection with a judicial proceeding, whether for compensation or otherwise.

“On the board” means that the name of a bail agent has been publicly posted or disseminated by a court as being ineligible to write bail bonds.

**§431: -B License denial, nonrenewal, suspension, or revocation.** In addition to causes in section 431:9A-112, the commissioner may deny, place on probation, suspend, revoke, or refuse to issue or renew a bail agent’s license and may levy a civil fine or penalty in accordance with articles 2 and 9A, or any combination of these actions, for any of the following causes:

- (1) Failing to satisfy, pay, or otherwise discharge a bail forfeiture judgment after having the bail agent’s name placed on the board for more than forty-five consecutive days for the same forfeiture;
- (2) Failing to report, to preserve without use and retain separately, or to return collateral taken as security on any bond to the principal or depositor of the collateral;
- (3) Failing to pay a final, nonappealable judgment award for failure to return or repay collateral received to secure a bond;
- (4) Continuing to execute bail bonds in any court in this State while on the board, where the bail forfeiture judgment that resulted in being placed

on the board has not been paid, stayed, vacated, exonerated, or otherwise discharged; or

- (5) Paying, directly or indirectly, any commission, service fee, brokerage, or other valuable consideration to any person selling, soliciting, or negotiating bail within this State unless, at the time the services were performed, the person was a duly licensed bail agent for the performance of the services.

**§431: -C Fiduciary responsibilities.** (a) In addition to the requirements of section 431:9A-123.5, bail agents shall have the responsibilities of a trustee for all premium, return premium funds, and collateral or security received or collected under this article.

(b) All premiums received, less commissions if authorized, shall be remitted to the insurer on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.

(c) All returned premiums received from or credited by insurers to the account of the bail agent shall be remitted to or credited to the account of the person entitled thereto within thirty days after the receipt or credit.

(d) An insurer having knowledge that a bail agent has failed to account for any collected premium to the insurer more than forty-five days after the contractual due date or, if there is no contractual due date, more than ninety days after receipt, shall promptly report the failure to the commissioner in writing.

(e) Every insurer shall remit unearned premium funds to the person entitled thereto or shall otherwise credit the account of the bail agent as soon as is practicable after entitlement to the premium funds has been established, but in no event more than forty-five days after the effective date of any cancellation or termination effected by the insurer or after the date of entitlement thereto, as established by notification of cancellation or of termination or as otherwise established. A bail agent having knowledge of a failure on the part of any insurer to comply with this subsection shall promptly report the failure to the commissioner in writing.

(f) No bail agent shall commingle premiums belonging to insurers and return premiums received or held by the bail agent or persons entitled to such funds with the bail agent's personal funds or with any other funds except those directly connected with the bail agent's bail business.

**§431: -D Bail agent not to act as attorney.** A bail agent who is also an attorney shall not represent a person to whom the attorney has furnished bail for compensation in any proceeding for which the attorney has furnished bail. The commissioner may place on probation, suspend, revoke, or refuse to renew a bail agent's license and may levy a civil fine or penalty in accordance with articles 2 and 9A, or any combination of these actions, for violation of this section."

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 3. This Act shall take effect on July 1, 2008.

(Approved June 3, 2008.)

## ACT 135

H.B. NO. 2954

A Bill for an Act Related to Towing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 290-11, Hawaii Revised Statutes, is amended to read as follows:

**“§290-11 Vehicles left unattended on private and public property; sale or disposition of abandoned vehicles.** (a) Notwithstanding any other provision of this chapter, any vehicle left unattended on private or public property without authorization of the owner or occupant of the property, may be towed away at the expense of the owner of the vehicle, by order of the owner, occupant, or person in charge of the property; provided that there is posted a notice prohibiting vehicles to park on the property without authorization. The notice shall state that the vehicle will be towed and held at the expense of the vehicle owner, as well as the name, address, and a telephone number of the facility where the vehicle will be towed and held. The notice shall be of such size and be placed in a location that is clearly visible to the driver of a vehicle approaching any individual marked or unmarked parking space; provided that where an entire parking lot consists of restricted parking spaces, placement of the notice at each entrance of the parking lot shall suffice.

(b) Towing companies engaged by the owner, occupant, or person in charge of the property shall:

- (1) Charge not more than \$65 for a tow, or \$75 for a tow using a dolly, plus a mileage charge of \$7.50 per mile towed and \$25 per day or fraction thereof for storage for the first seven days and \$20 per day thereafter. When the tow occurs between the hours of six o'clock p.m. and six o'clock a.m., from Monday through Thursday and from six o'clock p.m. Friday to six o'clock a.m. Monday, the towing company shall be entitled to an overtime charge of \$15. If the vehicle is in the process of being hooked up or is hooked up to the tow truck and the owner appears on the scene [before the vehicle has been moved by the tow truck], the towing company shall unhook the vehicle[-] and shall not charge any fee to the owner of the vehicle. In the case of a difficult hookup, meaning an above or below ground hookup in a multilevel facility, a towing surcharge of \$30 shall be applicable;
- (2) Determine the name of the legal owner and the registered owner of the vehicle from the department of transportation or the county department of finance. The legal owner and the registered owner shall be notified in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed fifteen days following the tow. The notice shall state:
  - (A) The maximum towing charges and fees allowed by law;
  - (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and
  - (C) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Where the owners have not been so notified, then the owner may recover the owner's car from the towing company without paying tow or storage fees; provided that the notice need not be sent to a legal or reg-



istered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. Absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five days after the mailing. A person, including but not limited to the owner's or driver's insurer, who has been charged in excess of the charges permitted under this section may sue for damages sustained and, if the judgment is for the plaintiff, the court shall award the plaintiff a sum not to exceed the amount of the damages and reasonable attorney's fees together with the cost of suit;

- (3) Provide, when a vehicle is recovered by the owner before written notice is sent by registered or certified mail, the owner with a receipt stating:
  - (A) The maximum towing charges and fees allowed by law; and
  - (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; ~~and~~

and

- (4) Accommodate payment by the owner for charges under paragraph (1) by cash and by either credit card or automated teller machine located on the premises.

(c) When a vehicle is not recovered within thirty days after the mailing of the notice, it shall be deemed abandoned and the owner of the towing company, or the owner of the towing company's authorized representative, after one public advertisement in a newspaper of general circulation in the ~~[State,]~~ state, may negotiate a sale of the vehicle or dispose of it as junk.

(d) The authorized seller of the vehicle shall be entitled to the proceeds of the sale to the extent that compensation is due the authorized seller for services rendered in respect to the vehicle, including reasonable and customary charges for towing, handling, storage, and the cost of the notices and advertising required by this part. Any remaining balance shall be forwarded to the legal or registered owner of the vehicle if the legal or registered owner can be found. If the legal or registered owner cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the legal or registered owner of the vehicle if a proper claim is filed therefor within one year from the execution of the sales agreement. If no claim is made within the year allowed, the money shall become a state realization.

(e) The transfer of title and interest by sale under this part is a transfer by operation of law; provided that if the certificate of ownership or registration is unavailable, a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.

(f) Notwithstanding any law or ordinance to the contrary, including subsection (g), and section 46-20.5, any towing company engaged in towing in a county with a population greater than five hundred thousand shall not be entitled to any overtime charge under subsection (b)(1) if towing services to consumers are not offered twenty-four hours per day every day of the week; provided that a towing company shall file their hours of operation with the police department in a county with a population greater than five hundred thousand.

~~[(f)]~~ (g) This section shall not apply to a county that has adopted ordinances regulating towing operations.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 3, 2008.)

## ACT 136

S.B. NO. 3051

A Bill for an Act Relating to Criminal History Background Checks for Social Services Programs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 346-17, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (f) to read:

“(f) As a condition for a certificate of approval, any organization, institution, or foster boarding home, including all adults residing in the foster boarding home, shall:

- (1) Meet all standards and requirements established by the department;
- (2) Be subject to criminal history record checks in accordance with section 846-2.7, and child abuse and neglect registry checks, in accordance with departmental procedures; and
- (3) Provide consent to the department or its designee to obtain criminal history record and child abuse and neglect registry information.

New employees of the organization, institution, or home shall be fingerprinted within five working days of employment.”

2. By amending subsection (j) to read:

“(j) The department or its designee shall request:

- (1) A criminal history record check through the Hawaii criminal justice data center on all operators, employees, and new employees of child care institutions, child placing organizations, and foster boarding homes, including all adults residing in the foster boarding homes, subject to licensure pursuant to section 846-2.7; and
- (2) A child abuse and neglect registry check on all operators, employees, and new employees of child care institutions, child placing organizations, and adults residing in a foster boarding home subject to licensure in accordance with departmental procedures.”

3. By amending subsection (l) to read:

“(l) The department or its designee shall make a name inquiry into the criminal history records for the first two years of certification of a foster boarding home and annually or biennially thereafter and into the child abuse and neglect registry in accordance with departmental procedures depending on the certification status of the home.”

SECTION 2. Section 346-19.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall develop procedures for obtaining verifiable information regarding the criminal history and child abuse and neglect registry information of persons who are seeking to become adoptive parents. ~~These procedures~~ The department or its designee shall [include] obtain criminal history record [checks] information through the Hawaii criminal justice data center in accordance with section 846-2.7[-], and child abuse record information from the department in accordance with departmental procedures.”

SECTION 3. Section 346-97, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) The department shall adopt rules pursuant to chapter 91 establishing standards regarding the reputable and responsible character of service providers who have direct contact with individuals receiving services under this part, including:

- (1) Licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers;
  - (2) Purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch;
  - (3) Foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants; and
  - (4) Contracted and subcontracted service providers and their employees and new employees who provide home and community-based services under Section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)) [-], or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services.
- (c) Individuals identified in subsection (b) shall:
- (1) Meet the standards regarding the reputable and responsible character of service providers;
  - (2) Be subject to criminal history record checks in accordance with section 846-2.7;
  - (3) Shall sign a waiver form stating that the department shall not be liable to the individual; and
  - (4) Provide consent to the department or its designee to obtain criminal history record information for verification.

New employees and adult volunteers shall consent to be fingerprinted, shall supply the necessary information to enable the criminal history record check prior to the start of employment or volunteering, and shall sign a waiver form stating that the department shall not be liable to the employee or volunteer.

(d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center on individuals identified in subsection (b) for the first two years that an individual identified in subsection (b) is required to have such checks, and shall conduct a criminal history record name inquiry into the state criminal history records annually or biennially thereafter.”

SECTION 4. Section 346-154, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

- “(c) A provider shall:
- (1) Be subject to criminal history record checks in accordance with section 846-2.7;
  - (2) Submit to the department a statement signed by any employee hired after the initial licensure or registration that requires the employee to indicate under penalty of law, whether the employee has ever been confirmed to have abused or neglected a child, including threatened harm; and
  - (3) Provide consent to the department or its designee to conduct a criminal history record check in accordance with section 846-2.7 and a child abuse record check, and to obtain criminal history and child abuse record information for verification.

(d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7, and child abuse record information from the department in accordance with departmental procedures on the applicant and any prospective employee of the applicant, including any new employee retained after the applicant is issued a

registration or license under this part, which shall include an annual name inquiry into the state criminal history record files.”

SECTION 5. Section 346-335, Hawaii Revised Statutes, is amended by amending subsections (a), (b), (c), (d), and (e) to read as follows:

“(a) The department shall develop standards to ensure the reputable and responsible character of operators ~~[and]~~, employees, volunteers, and other adults regularly present, except for adults in care, of the ~~[home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as defined in this chapter.]~~ programs identified in section 346-97.

(b) An applicant for ~~[a home and community-based case management agency license and operators, employees, and new employees of a home and community-based case management agency]~~ the programs identified in section 346-97 shall:

- (1) Be subject to criminal history record checks in accordance with section 846-2.7;
- (2) Be subject to adult abuse perpetrator checks, if the individual has direct contact with a client. For the purposes of this section, “adult abuse perpetrator check” means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual’s name and birth date in the department’s adult protective service file; and
- (3) Provide consent to the department or its designee to conduct an adult abuse perpetrator check and to obtain other criminal history record information for verification.

(c) New employees of the ~~[home and community-based case management agency]~~ programs identified in section 346-97 shall be fingerprinted within five working days of employment, for the purpose of complying with the criminal history record check requirement.

(d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7 on applicants for ~~[home and community-based case management agency licenses, and operators, employees, and new employees of home and community-based case management agencies.]~~ programs identified in section 346-97. The Hawaii criminal justice data center may assess the applicants and operators, employees, and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated ~~[purpose]~~ purposes for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

(e) The department or its designee shall make a name inquiry into the criminal history records and the adult protective service file for the first two years a home and community-based case management agency is licensed and annually or biennially thereafter depending on the licensure status of the home and community-based case management agency.”

SECTION 6. Section 352D-4.3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Employees, prospective employees, and volunteers of contracted providers or subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office shall be required to agree to criminal history record checks~~[-]~~ conducted by the office or its designee in accordance with section 846-2.7. The office shall develop procedures for obtaining verifiable information regarding the criminal history records of individuals seeking to serve as employees

or volunteers of contracted providers or subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office.

(b) Except as otherwise specified, any individual who is employed, seeks employment, or volunteers with a contracted provider or subcontractor in a position that necessitates close proximity to youth when providing services on behalf of the office shall:

- (1) Submit to the office a sworn statement indicating whether the individual has ever been convicted of an offense for which incarceration is a sentencing option;
- (2) Be subject to criminal history record checks through the Hawaii criminal justice data center in accordance with section 846-2.7. An annual name inquiry shall be conducted in the state criminal history record files; and
- (3) Provide to the office written consent for the office or its designee to obtain criminal history record information for verification.

Information obtained pursuant to this section shall be used exclusively by the office for purposes of determining whether a person is suitable for working or volunteering in a position that necessitates close proximity to youth when providing contracted services on behalf of the office, or in conjunction with services provided for youth at the Hawaii youth correctional facility, while in custody, on furlough, or on parole. All such decisions shall be subject to any applicable federal laws and regulations.”

SECTION 7. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care [~~homes,~~] home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;

- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided in<sup>1</sup> section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, ~~[dependent]~~ vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;

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- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97; and
- (24) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2008.

(Approved June 3, 2008.)

**Note**

- 1. Prior to amendment “by” appeared here.

**ACT 137**

H.B. NO. 2326

A Bill for an Act Relating to Mortgages.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act shall be known as the “Mortgage Rescue Fraud Prevention Act.”

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 26 to be appropriately designated and to read as follows:

**“CHAPTER**

**MORTGAGE RESCUE FRAUD PREVENTION ACT**

§ -1 **Purpose.** The purpose of this chapter is to protect Hawaii consumers from persons who prey on homeowners who face property foreclosures, liens, or encumbrances. Consumers who face foreclosures, liens, or encumbrances are often in desperate financial situations that can have severe adverse consequences for individuals and families even if the consumers have significant equity in their residential real property. The consumers’ desperation makes them vulnerable to persons who claim they can stop, prevent, or delay foreclosures, liens, or encumbrances. Persons who make these claims often use the consumers’ desperation to foster unequal bargaining positions and withhold or misrepresent vital information and details. As a result, consumers may be convinced to give up their real property interests and valuable equity to these persons while receiving little in return. Requiring full and complete disclosure of vital information will better enable consumers to make informed decisions when dealing with persons claiming to be able to stop foreclosures, liens, or encumbrances. This Act addresses possible misrepresentations by compelling persons who offer assistance to fully and completely describe their services in written contracts and gives the homeowners the right to cancel at any time before a distressed property consultant has performed all services called for in a contract.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Consideration” means any payment or thing of value provided to an owner of a distressed property, including reasonable costs paid to independent third parties necessary to complete the distressed property conveyance or payment of money to satisfy a debt or legal obligation of an owner of the distressed property. “Consideration” shall not include any amounts paid or to be paid directly or indirectly to the distressed property purchaser, including amounts identified as “gift equity,” “fees,” “escrow,” or “down payment”.

“Distressed property” means any residential real property that:

- (1) Is in foreclosure or at risk of foreclosure because payment of any loan that is secured by the residential real property is more than sixty days delinquent;
- (2) Had a lien or encumbrance charged against it because of nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
- (3) Is at risk of having a lien or encumbrance charged against it because the payments of any taxes, lease assessments, association fees, or maintenance fees are more than ninety days delinquent;
- (4) Secures a loan for which a notice of default has been given; or
- (5) Secures a loan that has been accelerated.

“Distressed property consultant” means any person who performs or makes any solicitation, representation, or offer to perform any of the following relating to a distressed property:

- (1) Stop or postpone the foreclosure sale or loss of any distressed property due to the nonpayment of any loan that is secured by the distressed property;
- (2) Stop or postpone the charging of any lien or encumbrance against any distressed property or eliminate any lien or encumbrance charged against any distressed property for the nonpayment of any taxes, lease assessments, association fees, or maintenance fees;
- (3) Obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
- (4) Assist the owner to exercise any cure of default arising under Hawaii law;
- (5) Obtain any extension of the period within which the owner may reinstate the owner’s rights with respect to the property;
- (6) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;
- (7) Assist the owner in foreclosure, loan default, or post-tax sale redemption period to obtain a loan or advance of funds;
- (8) Avoid or ameliorate the impairment of the owner’s credit resulting from the recording or filing of a notice of default or the conduct of a foreclosure sale or tax sale; or
- (9) Save the owner’s residence from foreclosure or loss of home due to nonpayment of taxes.

“Distressed property consultant” shall not include any of the following:

- (1) A person or the person’s authorized agent acting under the express authority or written approval of the federal Department of Housing and Urban Development;
- (2) A person who holds or is owed an obligation secured by a lien on any distressed property, or a person acting under the express authorization or written approval of such person, when the person performs services in connection with the obligation or lien, if the obligation or lien did



not arise as the result of or as part of a proposed distressed property conveyance;

- (3) Banks, savings banks, savings and loan associations, credit unions, trust companies, depository and nondepository financial service loan companies, and insurance companies organized, chartered, or holding a certificate of authority to do business under the laws of this State or any other state, or under the laws of the United States;
- (4) Licensed attorneys engaged in the practice of law;
- (5) A federal Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities, while engaged in the business of these persons or entities; or
- (6) A nonprofit organization that, pursuant to chapter 446, offers counseling or advice to an owner of a distressed property, if the nonprofit organization has no contract or agreement for services with lenders, distressed property purchasers, or any person who effects loans or distressed property purchases.

“Distressed property consultant contract” means any agreement or obligation between an owner or agent of an owner of a distressed property and a distressed property consultant.

“Distressed property conveyance” means the transfer of any interest in a distressed property effected directly or indirectly by or through a distressed property consultant.

“Distressed property conveyance contract” means any agreement or obligation affecting a distressed property conveyance.

“Distressed property lease” means any agreement or obligation regarding the lease or rental of a distressed property effected directly or indirectly by or through a distressed property consultant or distressed property purchaser.

“Distressed property purchaser” means any person who acquires any interest in a distressed property directly or indirectly through a distressed property conveyance or distressed property conveyance contract.

“Material fact” means a fact that, if disclosed, might have influenced the distressed property owner to not enter into the agreement or obligation.

“Person” means any individual, partnership, corporation, limited liability company, association, or other group or entity, however organized.

**§ -3 Distressed property consultant contract.** (a) A distressed property consultant contract shall be in writing and shall fully disclose all services to be performed by the distressed property consultant and all terms of any agreements between the distressed property consultant and all owners of the distressed property, including the total amount and terms of compensation to be directly or indirectly received by the distressed property consultant.

(b) A distressed property consultant contract shall contain on its first page in a type size no smaller than fourteen-point boldface type:

- (1) A description of the distressed property;
- (2) The name, street address, and telephone number of the distressed property consultant; and
- (3) The name and address of the distressed property consultant to which notice of cancellation is to be delivered.

(c) A distressed property consultant contract shall be dated and signed by the distressed property consultant. If the distressed property consultant is a person other than an individual, the individual executing the distressed property consultant contract on behalf of the distressed property consultant shall identify the title and office held by the individual.

(d) A distressed property consultant contract shall be dated and signed by all owners of the distressed property.

(e) The distressed property consultant shall provide each distressed property owner with a copy of the distressed property consultant contract and attached notice of cancellation immediately upon execution by all parties to the distressed property consultant contract. A distressed property consultant contract shall not be effective until all parties to the distressed property consultant contract have signed the contract.

**§ -4 Right to cancel a distressed property consultant contract.** (a) A distressed property consultant contract shall contain, immediately before the space reserved for all the distressed property owners' signatures, the following notice of right to cancel a distressed property consultant contract in a type size no smaller than fourteen-point boldface type, completed with the name of the distressed property consultant:

“YOU, THE OWNER, MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE THE DISTRESSED PROPERTY CONSULTANT HAS FULLY PERFORMED EACH AND EVERY SERVICE THE DISTRESSED PROPERTY CONSULTANT CONTRACTED TO PERFORM OR REPRESENTED WOULD BE PERFORMED. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

(Name of the distressed property consultant) (or anyone working for or with the distressed property consultant) CANNOT:

- (1) Take any money from you or ask you for money until (Name of the distressed property consultant) has completely finished doing everything (Name of the distressed property consultant) said he or she would do; or
- (2) Ask you to sign or have you sign any lien, encumbrance, mortgage, assignment, or deed unless the lien, encumbrance, mortgage, assignment, or deed is fully described including all disclosures required by law.”

(b) A distressed property consultant contract shall be accompanied by the following notice of cancellation form, in duplicate, attached to the contract and easily detachable, in a type size no smaller than fourteen-point boldface type, completed with the date the contract was last signed, the name of the distressed property consultant, and the address where the notice of cancellation is to be delivered:

“NOTICE OF CANCELLATION

(Enter date contract last signed)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE THE DISTRESSED PROPERTY CONSULTANT HAS FULLY PERFORMED EACH AND EVERY SERVICE THE DISTRESSED PROPERTY CONSULTANT CONTRACTED TO PERFORM OR REPRESENTED WOULD BE PERFORMED.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER WRITTEN NOTICE OF CANCELLATION TO (Name of distressed property consultant) AT (Address where notice of cancellation is to be delivered).

I HEREBY CANCEL THIS TRANSACTION.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Owner's signature)”

**§ -5 Cancellation of a distressed property consultant contract. (a)**

In addition to any other legal right to rescind a contract, any distressed property owner has the right to cancel a distressed property consultant contract, without any penalty or obligation, at any time before the distressed property consultant has fully performed each and every service the distressed property consultant contracted to perform or represented would be performed.

(b) Cancellation occurs when any owner of a distressed property delivers, by any means, written notice of cancellation to the address specified in the distressed property consultant contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the distressed property consultant contract, shall be conclusive proof of notice of cancellation.

(d) Notice of cancellation given by any owner of a distressed property need not take the particular form as provided with the distressed property consultant contract and, however expressed, is effective if it indicates the intention of an owner not to be bound by the contract.

**§ -6 Distressed property conveyance contract. (a)** A distressed property conveyance contract shall be in writing and shall fully disclose all rights and obligations of the distressed property purchaser and all owners of the distressed property and all terms of any agreements between the distressed property purchaser and all owners of the distressed property.

(b) Every distressed property conveyance contract shall specifically include the following terms:

- (1) The total consideration to be given by the distressed property purchaser or tax lien payor in connection with or incident to the distressed property conveyance;
- (2) A complete description of the terms of payment or other consideration including any services of any nature that the distressed property purchaser represents will be performed for any owner of the distressed property before or after the distressed property conveyance;
- (3) A complete description of the terms of any related agreement designed to allow any owner of the distressed property to remain in the distressed property, such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy;
- (4) All notices as provided in this chapter;
- (5) The following notice, in a type size no smaller than fourteen-point boldface type, completed with the name of the distressed property purchaser, shall appear immediately above the notice of right to cancel a distressed property conveyance contract required by section -7(a):

**“NOTICE REQUIRED BY HAWAII LAW**

**UNTIL YOUR RIGHT TO CANCEL THIS CONTRACT HAS ENDED, (Name of distressed property purchaser) OR ANYONE WORKING FOR (Name of distressed property purchaser) CANNOT ASK YOU TO SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT. YOU ARE URGED TO HAVE THIS CONTRACT REVIEWED BY AN ATTORNEY OF YOUR CHOICE WITHIN FIFTEEN BUSINESS DAYS OF SIGNING IT.”;**

and

- (6) If title to the distressed property will be transferred in the conveyance transaction, the following notice, in a type size no smaller than fourteen-point boldface type, completed with the name of the distressed

property purchaser, shall appear immediately below the notice required by paragraph (5):

“NOTICE REQUIRED BY HAWAII LAW  
AS PART OF THIS TRANSACTION, YOU ARE GIVING UP  
TITLE TO YOUR HOME.”

(c) A distressed property conveyance contract shall contain on its first page in a type size no smaller than fourteen-point boldface type:

- (1) A description of the distressed property;
- (2) The name, street address, and telephone number of the distressed property purchaser; and
- (3) The name and address of the distressed property purchaser to which notice of cancellation is to be delivered.

(d) A distressed property conveyance contract shall be dated and signed by the distressed property purchaser. If the distressed property purchaser is a person other than an individual, the individual executing the distressed property conveyance contract on behalf of the distressed property purchaser shall identify the title and office held by the individual.

(e) A distressed property conveyance contract shall be dated and signed by all owners of the distressed property.

(f) The distressed property purchaser shall provide each distressed property owner with a copy of the distressed property conveyance contract and attached notice of cancellation form immediately upon execution by all parties to the distressed property conveyance contract. A distressed property conveyance contract shall not be effective until all parties to the distressed property conveyance contract have signed the contract.

(g) Pursuant to chapter 501 or 502, the distressed property purchaser shall record the distressed property conveyance contract no earlier than fifteen days after its execution but no later than twenty days after its execution; provided that the contract has not been canceled, or no later than fifteen days after the last day any distressed property owner has the right to cure a default under state law, whichever is later.

**§ -7 Right to cancel a distressed property conveyance contract.** (a) A distressed property conveyance contract shall contain, immediately before the space reserved for all the distressed property owners' signatures, the following notice of right to cancel a distressed property conveyance contract in a type size no smaller than fourteen-point boldface type, completed with the correct date and time of day on which the cancellation right ends:

“YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF  
YOUR HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT  
ANY TIME BEFORE (Date and time of day). SEE THE ATTACHED  
NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF  
THIS RIGHT.”

(b) A distressed property conveyance contract shall be accompanied by the following notice of cancellation form, in duplicate, attached to the contract and easily detachable, in a type size no smaller than fourteen-point boldface type, completed with the date the contract was last signed, the name of the distressed property purchaser, the address where notice of cancellation is to be delivered, and the correct date and time of day on which the cancellation right ends:

“NOTICE OF CANCELLATION

(Enter date contract last signed)  
(Date)

YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF YOUR HOME, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME BEFORE THE LATER OF MIDNIGHT OF THE FIFTEENTH BUSINESS DAY FOLLOWING THE DAY ON WHICH THE LAST PARTY TO A DISTRESSED PROPERTY CONVEYANCE CONTRACT SIGNS THE DISTRESSED PROPERTY CONVEYANCE CONTRACT OR 5:00 P.M. ON THE LAST DAY OF THE PERIOD DURING WHICH ANY OWNER OF A DISTRESSED PROPERTY HAS THE RIGHT TO CURE THE DEFAULT UNDER HAWAII LAW.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS NOTICE OF CANCELLATION, OR ANY OTHER WRITTEN NOTICE OF CANCELLATION, TO (Name of distressed property purchaser) AT (Address where notice of cancellation is to be delivered) NOT LATER THAN (Enter date and time of day).

I HEREBY CANCEL THIS TRANSACTION.

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(Seller’s signature)”

**§ -8 Cancellation of a distressed property conveyance contract.** (a) In addition to any other legal right to rescind a contract, any distressed property owner has the right to cancel a distressed property conveyance contract, without any penalty or obligation, at any time before the later of midnight of the fifteenth business day following the day on which the last party to a distressed property conveyance contract signs the distressed property conveyance contract or 5:00 p.m. on the last day of the period during which any owner of a distressed property has the right to cure a default under state law.

(b) The period of fifteen business days following the day on which the last party to a distressed property conveyance contract signs the contract during which any owner of the distressed property may cancel the contract shall not begin to run until all parties to the distressed property conveyance contract have executed the distressed property conveyance contract and the distressed property purchaser has complied with all the requirements of sections -6, -7, and this section.

(c) Cancellation occurs when any owner of a distressed property delivers, by any means, and within the time specified under subsection (a), written notice of cancellation to the address specified in the distressed property conveyance contract.

(d) Notice of cancellation, if given by mail, is effective when deposited in the mail with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the distressed property conveyance contract, shall be conclusive proof of notice of cancellation.

(e) Notice of cancellation given by any owner of a distressed property need not take the particular form as provided with the distressed property conveyance contract and, however expressed, is effective if it indicates the intention of an owner not to be bound by the contract.

(f) Within fifteen days following receipt of a notice of cancellation given in accordance with this section, the distressed property purchaser shall return, without condition, any and all original contracts and documents signed by any owner of the distressed property.

**§ -9 Distressed property lease.** (a) A distressed property lease shall be in writing and shall fully disclose:

- (1) All rights and obligations of the distressed property lessor and distressed property lessee;
- (2) The exact terms of the agreement between the distressed property lessor and distressed property lessee;
- (3) The exact period of time the distressed property lease is to be in effect; and
- (4) The total amount and terms of compensation to be directly or indirectly received by the distressed property lessor.

(b) Distressed property lessees shall be afforded all rights under the landlord-tenant law of the State. No distressed property lease shall provide a distressed property lessee with rights less than those provided by the State's landlord-tenant law as set forth in chapters 521 and 666.

(c) The first page of a distressed property lease shall contain in a type size no smaller than fourteen-point boldface type:

- (1) A description of the distressed property;
- (2) The name, street address, and telephone number of the distressed property lessor; and
- (3) The name and address of the distressed property lessor to which lease or rental payments, correspondence, and notices are to be mailed.

(d) A distressed property lease shall be dated and signed by the distressed property lessor. If the distressed property lessor is a person other than an individual, the individual executing the distressed property lease on behalf of the distressed property lessor shall identify the title and office held by the individual.

(e) A distressed property lease shall be dated and signed by all lessees of the distressed property.

(f) The distressed property lessor shall provide each distressed property lessee with a copy of the distressed property lease immediately upon execution by all parties to the distressed property lease. A distressed property lease shall not be effective until all parties to the distressed property lease have signed the lease.

**§ -10 Prohibitions.** (a) A distressed property consultant shall not:

- (1) Misrepresent or conceal any material fact;
- (2) Induce or attempt to induce a distressed property owner to waive any provision of this chapter;
- (3) Make any promise or guarantee not fully disclosed in the distressed property consultant contract;
- (4) Engage or attempt to engage in any activity or act concerning the distressed property not fully disclosed in the distressed property consultant contract;
- (5) Induce or attempt to induce a distressed property owner to engage in any activity or act not fully disclosed in the distressed property consultant contract;
- (6) Take, ask for, claim, demand, charge, collect, or receive any compensation until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented would be performed;

- (7) Take, ask for, claim, demand, charge, collect, or receive for any reason, any fee, interest, or any other compensation that exceeds the two most recent monthly mortgage installments of principal and interest due on the loan first secured by the distressed property or the most recent annual real property tax charged against the distressed property, whichever is less;
- (8) Take or ask for a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. This type of security is void and not enforceable;
- (9) Receive any consideration from any third party in connection with services rendered to a distressed property owner unless the consideration is fully disclosed in the distressed property consultant contract;
- (10) Acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate, in a distressed property from a distressed property owner with whom the distressed property consultant has contracted;
- (11) Require or ask a distressed property owner to sign any lien, encumbrance, mortgage, assignment, or deed unless the lien, encumbrance, mortgage, assignment, or deed is fully described in the distressed property consultant contract, including all disclosures required by this chapter; or
- (12) Take any power of attorney from a distressed property owner for any purpose, except to inspect documents concerning the distressed property as allowed by law.
  - (b) A distressed property purchaser shall not:
    - (1) Misrepresent or conceal any material fact;
    - (2) Induce or attempt to induce a distressed property owner to waive this chapter;
    - (3) Make any promise or guarantee not fully disclosed in the distressed property conveyance contact<sup>1</sup>;
    - (4) Engage or attempt to engage in any activity or act concerning the distressed property not fully disclosed in the distressed property conveyance contract;
    - (5) Induce or attempt to induce a distressed property owner to engage in any activity or act not fully disclosed in the distressed property conveyance contract;
    - (6) Enter into or attempt to enter into a distressed property conveyance unless the distressed property purchaser verifies and can demonstrate that an owner of the distressed property has a reasonable ability to pay any amounts due to reacquire an interest in the distressed property or to make monthly or any other payments due under a distressed property conveyance contract or distressed property lease, if the distressed property purchaser allows any owner of a distressed property to remain in, occupy, use, or repurchase the distressed property;
    - (7) Fail to make a payment to the owner of the distressed property at the time the title is conveyed so that the owner of the distressed property has received consideration in an amount of at least eighty-two per cent of the property's fair market value, or, in the alternative, fail to pay the owner of the distressed property no more than the costs necessary to extinguish all of the existing obligations on the distressed property, as set forth in this chapter; provided that the owner's costs to repurchase the distressed property pursuant to the terms of the distressed property conveyance contract do not exceed one hundred twenty-five per cent of the distressed property purchaser's costs to purchase the property. If an owner is unable to repurchase the property pursuant to the terms

- of the distressed property conveyance contract, the distressed property purchaser shall not fail to make a payment to the owner of the distressed property so that the owner of the distressed property has received consideration in an amount of at least eighty-two per cent of the property's fair market value at the time of conveyance or at the expiration of the owner's option to repurchase;
- (8) Enter into any repurchase or lease agreement as part of a distressed property conveyance contract or subsequent conveyance of an interest in the distressed property back to a distressed property owner that is unfair or commercially unreasonable or engage in any other unfair conduct;
  - (9) Represent, directly or indirectly, that the distressed property purchaser is acting as an advisor or a consultant or is acting on behalf of or assisting an owner of a distressed property to "remain in the house," "save the house," "buy time," or "stop the foreclosure" or is doing anything other than purchasing the distressed property;
  - (10) Misrepresent the distressed property purchaser's status as to licensure or certification;
  - (11) Do any of the following until after the time during which an owner of a distressed property may cancel the distressed property conveyance contract:
    - (A) Accept from an owner of the distressed property execution of any instrument of conveyance of any interest in the distressed property;
    - (B) Execute an instrument of conveyance of any interest in the distressed property; or
    - (C) Pursuant to chapter 501 or 502, record any document signed by an owner of a distressed property, including any instrument of conveyance;
  - (12) Fail to re-convey title in a distressed property to the distressed property owner or owners when the terms of the distressed property conveyance contract have been fulfilled if the distressed property consultant or distressed property purchaser contracted or represented that title in the distressed property would be re-conveyed to the distressed property owner or owners when the terms of the distressed property conveyance contract have been fulfilled;
  - (13) Induce or attempt to induce an owner of the distressed property to execute a quitclaim deed concerning a distressed property;
  - (14) Enter into a distressed property conveyance contract where any party to the contract is represented by power of attorney;
  - (15) Immediately following the conveyance of the distressed property, fail to extinguish all liens encumbering the distressed property at the time of the distressed property conveyance or fail to assume all liability with respect to all liens encumbering the distressed property at the time of the distressed property conveyance, which assumption shall be accomplished without violations of the terms and conditions of the lien or liens being assumed. Nothing herein shall preclude a lender from enforcing any provision in a contract that is not otherwise prohibited by law;
  - (16) Fail to complete a distressed property conveyance through:
    - (A) An escrow depository licensed by the department of commerce and consumer affairs;



- (B) A bank, trust company, or savings and loan association authorized under any law of this State or of the United States to do business in the State;
  - (C) A person licensed as a real estate broker in this State who is the broker for a party to the escrow; provided that the person does not charge any escrow fee; or
  - (D) A person licensed to practice law in this State who, in escrow, is not acting as the employee of a corporation; provided that the person does not charge any escrow fee; or
- (17) Cause the property to be conveyed or encumbered without the knowledge or permission of all owners of a distressed property or in any way frustrate the ability of a distressed property owner to reacquire the distressed property.
- (c) There shall be a rebuttable presumption that an appraisal by a person licensed or certified as a real property appraiser by the State or the federal government is an accurate determination of the fair market value of the property.
  - (d) An evaluation of “reasonable ability to pay” under this chapter shall include debt to income ratio, fair market value of the distressed property, and the distressed property owner’s payment history.

**§ -11 Violation, penalties.** (a) Any person who violates any provision of this chapter shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2.

(b) The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 3, 2008.)

**Note**

1. So in original.

**ACT 138**

S.B. NO. 2454

A Bill for an Act Relating to Mortgage Foreclosures.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 667-5, Hawaii Revised Statutes, is amended to read as follows:

**“§667-5 Foreclosure under power of sale; notice; affidavit after sale. (a)** When a power of sale is contained in a mortgage, and where the mortgagee, ~~[or]~~ the mortgagee’s successor in interest, or any person authorized by the power to act in the premises, ~~[may, upon a breach of the condition, give]~~ desires to foreclose under power of sale upon breach of a condition of the mortgage, the mortgagee, successor, or person shall be represented by an attorney who is licensed to practice law in the State and is physically located in the State. The attorney shall:

- (1) Give notice of the mortgagee's, successor's, or person's intention to foreclose the mortgage and of the sale of the mortgaged property, by publication of the notice once in each of three successive weeks (three publications), the last publication to be not less than fourteen days before the day of sale, in a newspaper having a general circulation in the county in which the mortgaged property lies; and ~~[also give such]~~
- (2) Give any notices and do all ~~[such]~~ acts as are authorized or required by the power contained in the mortgage.
- (b) Copies of the notice required under subsection (a) shall be ~~[filed]~~:
- (1) Filed with the state director of taxation ~~[and shall be posted]~~; and
- (2) Posted on the premises not less than twenty-one days before the day of sale.
- (c) Upon the request of any person entitled to notice pursuant to this section and sections 667-5.5 and 667-6, the attorney, the mortgagee, successor, or person represented by the attorney shall disclose to the requestor the following information:
- (1) The amount to cure the default, together with the estimated amount of the foreclosing mortgagee's attorneys' fees and costs, and all other fees and costs estimated to be incurred by the foreclosing mortgagee related to the default prior to the auction within five business days of the request; and
- (2) The sale price of the mortgaged property once auctioned.
- (d) Any sale, of which notice has been given as aforesaid, may be postponed from time to time by public announcement made by the mortgagee or by some person acting on the mortgagee's behalf. Upon request made by any person who is entitled to notice pursuant to section 667-5.5 or 667-6, or this section, the mortgagee or person acting on the mortgagee's behalf shall provide the date and time of a postponed auction, or if the auction is cancelled, information that the auction was cancelled. The mortgagee ~~[shall,]~~ within thirty days after selling the property in pursuance of the power, shall file a copy of the notice of sale and the mortgagee's affidavit, setting forth the mortgagee's acts in the premises fully and particularly, in the bureau of conveyances.
- (e) The affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided in chapter 501 or 502, as the case may be.
- (f) This section is inapplicable if the mortgagee is foreclosing as to personal property only."

SECTION 2. Section 667-7, Hawaii Revised Statutes, is amended to read as follows:

**"§667-7 Notice~~[-construction,]~~ contents; affidavit.** (a) The ~~[true intent and meaning of section 667-5 is that the]~~ notice of intention of foreclosure ~~[may also]~~ shall contain ~~[a]~~:

- (1) A description of the mortgaged property ~~[and a]~~; and
- (2) A statement of the time and place proposed for the sale thereof at any time after the expiration of four weeks from the date when first advertised~~[-and also that the]~~.
- (b) The affidavit ~~[contemplated by]~~ described under section 667-5 may lawfully be made by any person duly authorized to act for the mortgagee, and in such capacity conducting the foreclosure."

SECTION 3. Section 667-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) When the mortgagor or the borrower has breached the mortgage agreement, and when the foreclosing mortgagee intends to conduct a power of sale fore-

closure under this part, the foreclosing mortgagee shall prepare a written notice of default addressed to the mortgagor, the borrower, and any guarantor. The notice of default shall state:

- (1) The name and address of the current mortgagee;
- (2) The name and last known address of the mortgagor, the borrower, and any guarantor;
- (3) The address or a description of the location of the mortgaged property, and the tax map key number of the mortgaged property;
- (4) The description of the default, and if the default is a monetary default, an itemization of the delinquent amount shall be given;
- (5) The action that must be taken to cure the default, including the amount to cure the default, together with the estimated amount of the foreclosing mortgagee's attorney's fees and costs, and all other fees and costs estimated to be incurred by the foreclosing mortgagee related to the default by the deadline date;
- (6) The date by which the default must be cured, which deadline date shall be at least sixty days after the date of the notice of default;
- (7) That if the default is not cured by the deadline date stated in the notice of default, the entire unpaid balance of the moneys owed to the mortgagee under the mortgage agreement will be due, that the mortgagee intends to conduct a power of sale foreclosure to sell the mortgaged property at a public sale without any court action and without going to court, and that the mortgagee or any other person may acquire the mortgaged property at the public sale; and
- (8) The name, address [~~in the State~~], including electronic address, and [~~the~~] telephone number [~~in the State~~] of the [~~person~~] attorney who is representing the foreclosing mortgagee[-]; provided that the attorney shall be licensed to practice law in the State and physically located in the State."

SECTION 4. Section 667-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The public sale may be either postponed or canceled by the foreclosing mortgagee. Notice of the postponement or the cancellation of the public sale shall be [~~announced~~]:

- (1) Announced by the foreclosing mortgagee at the date, time, and place of the last scheduled public sale[-]; and
- (2) Provided, upon request, to any other person who is entitled to receive the notice of default under section 667-22(c)."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 3, 2008.)

## ACT 139

S.B. NO. 3102

A Bill for an Act Relating to the Land Conservation Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 173A-4, Hawaii Revised Statutes, is amended to read as follows:

**“§173A-4 Authority to acquire and convey.** (a) In consultation with the senate president and speaker of the house of representatives, the board may acquire, by purchase, gift, or the exercise of the power of eminent domain as authorized by chapter 101, any land having value as a resource to the State. Such acquisition is hereby declared to be for a public use.

(b) The board may, subject to chapter 171, in consultation with the senate president and speaker of the house of representatives, and with the approval of the governor, sell, lease, or otherwise convey any such land subject to terms and conditions that it deems appropriate and that will ensure that the transferee shall not use the land in a manner that is inconsistent with the purposes for which it was acquired by the board. The terms and conditions shall run with the land and shall be binding on the transferee’s heirs, successors, and assigns. The board may seek enforcement of the terms and conditions in any court of appropriate jurisdiction.

(c) The board may, in consultation with the senate president and the speaker of the house of representatives, require as a condition of the receipt of funds that state, county, and nonprofit land conservation organizations receiving funds under this chapter provide a conservation easement under chapter 198, or an agricultural easement or deed restriction or covenant to an appropriate land conservation organization or county, state, or federal natural resource conservation agency, that shall run with the land and be recorded with the land to ensure the long-term protection of land having value as a resource to the State and preserve the interests of the State.”

SECTION 2. Section 173A-5, Hawaii Revised Statutes, is amended to read as follows:

**“§173A-5 Land conservation fund.** (a) A land conservation fund, hereinafter called “fund”, is hereby established.

(b) The proceeds from the sale of any general obligation bonds[;] authorized and issued for purposes of this chapter[;] shall be deposited in or credited to the fund.

(c) Any net proceeds or revenue from the operation, management, sale, lease, or other disposition of land or the improvements on ~~such~~ the land[;] acquired or constructed by the board under the provisions of this chapter[;] shall also be deposited in or credited to the fund.

(d) Ten per cent of all taxes imposed and collected by section 247-1 shall be deposited in or credited to the fund every year.

(e) Moneys from any other private or public source may be deposited in or credited to the fund; provided that mandates, regulations, or conditions on these funds do not conflict with the use of the fund under this chapter. Moneys received as a deposit or private contribution shall be deposited, used, and accounted for in accordance with the conditions established by the agency or person making the contribution.

~~(e)~~ (f) The fund shall be administered and managed by the department.

~~[(f)]~~ (g) The acquisition of interests or rights in land having value as a resource to the State for the preservation of~~[:]~~ the following shall constitute a public purpose for which public funds may be expended or advanced:

- (1) Watershed protection;
- (2) Coastal areas, beaches, and ocean access;
- (3) Habitat protection;
- (4) Cultural and historical sites;
- (5) Recreational and public hunting areas;
- (6) Parks;
- (7) Natural areas;
- (8) Agricultural production; ~~[or]~~ and
- (9) Open spaces and scenic resources~~;~~

~~constitutes a public purpose for which public funds may be expended or advanced].~~

~~[(g)]~~ (h) The fund shall be used for:

- (1) The acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the establishment of permanent conservation easements under chapter 198 or agricultural easements;
- (2) The payment of any debt service on state financial instruments relating to the acquisition of interests or rights in land having value as a resource to the State; and
- (3) Annual administration costs for the fund, not to exceed five per cent of annual fund revenues of the previous year.
- (4) Costs related to the operation, maintenance, and management of lands acquired by way of this fund that are necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands; provided that the costs related to the operation, maintenance, and management of lands acquired by way of this fund do not exceed five per cent of annual fund revenues of the previous year.

~~[(h)]~~ (i) Based on applications from state agencies, counties, and nonprofit land conservation organizations, the department, in consultation with the senate president and speaker of the house of representatives, shall recommend to the board specific parcels of land to be acquired, restricted with conservation easements, or preserved in similar fashion. The board shall review the selections and approve or reject the selections according to the availability of moneys in the fund. To be eligible for grants from the fund, state and county agencies and nonprofit land conservation organizations shall submit applications to the department that contain:

- (1) Contact information for the project;
- (2) A description of the project;
- (3) The request for funding;
- (4) Cost estimates for acquisition of the interest in the land;
- (5) Location and characteristics of the land; and
- (6) Other similar, related, or relevant information as ~~[may be]~~ determined by the department.

~~[(i)]~~ (j) For applications approved by the board, the board may acquire land having value as a resource to the State, pursuant to section 173A-4, or the board may award grants from the fund to the qualifying state or county agencies or nonprofit land conservation organizations for the preservation of the real property. Where the recipient of a grant is a county agency or nonprofit land conservation organization, the board shall require additional matching funds of at least twenty-five per cent of the total project costs. Matching funds may be in the form of:

- (1) Direct moneys;
- (2) A combination of public and private funds;

- (3) Land value donation;
- (4) In-kind contributions; or
- (5) Any combination of the above[;

and evidence].

(k) Evidence of [these] the matching funds in subsection (j) shall be made available [from] by the qualifying entities prior to distribution of the fund grant.

(j) (l) The board shall:

- (1) Track amounts disbursed from the fund;
- (2) Prepare and submit an annual report to [be transmitted to] the governor and the legislature at least twenty days prior to the convening of each regular session [of the legislature]. The annual report shall include:
  - (A) A summary of all interests or rights in land acquired during the preceding fiscal year;
  - (B) A summary of what value each newly acquired land has as a resource to the State;
  - (C) Proposals for future land acquisitions, including a summary of the resource value that the land may possess;
  - (D) A financial report for the preceding fiscal year; and
  - (E) Objectives and budget projections for the following fiscal year; and
- (3) Make copies of the annual report available to the public.”

SECTION 3. Section 173A-9, Hawaii Revised Statutes, is amended to read as follows:

“§173A-9 Grants to state agencies, counties, and nonprofit land conservation organizations. After consultation with the senate president and speaker of the house of representatives, and subject to the approval of the governor, the board may make grants to state agencies, counties, and nonprofit land conservation organizations from available funds for the purchase or acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the purchase of permanent conservation easements under chapter 198, and approved for purchase or acquisition by the board[-], or for the operation, maintenance, and management of lands acquired under this chapter that are necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands. Any land so acquired by any state agency or county may be sold, leased, or otherwise disposed of, subject to chapter 171, with the prior written approval of the board. Any land acquired by any nonprofit land conservation organization under this chapter may be sold, leased, or otherwise disposed of with the prior written approval of the board. Any permanent conservation easement established under this section that includes partnership with a federal land conservation program may be transferred only as provided by rules of the federal program.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon approval.

(Approved June 4, 2008.)

A Bill for an Act Relating to Land Acquisition.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is in the public interest to protect and preserve Hawaii's historic and cultural heritage. The proposed expansion of the Turtle Bay Hotel and Resort located in the ahupuaa of Hana Kaeo, in Kahuku on the island of Oahu is contrary to the public interest.

The legislature therefore declares that it is in the public interest to acquire private lands currently owned by Kuilima Resort Company, Oaktree Capital Management, LLC, and their successors in interest, for preservation, by purchasing those lands, exercising the State's power of eminent domain to acquire those lands, or participating in a cooperative agreement to acquire those lands.

The purpose of this Act is to appropriate funds and to authorize the governor, or the governor's designee, to acquire the area commonly known as the Turtle Bay Hotel and Resort and the accompanying undeveloped property by purchasing them outright, by exercising the State's power of eminent domain, or by entering into a cooperative agreement to acquire the property.

SECTION 2. The governor or the governor's designee shall immediately initiate negotiations with Kuilima Resort Company, Oaktree Capital Management, LLC, any other entity or person that holds an interest in the property, and their successors in interest, to acquire properties held by Kuilima Resort Company, a Hawaii general partnership; Oaktree Capital Management, LLC; and their successors in interest, inclusive of those parcels mauka of Kamehameha highway. The financing of the acquisition may be by one or more of the following means:

- (1) Appropriations made by the legislature from the general fund or any special funds;
- (2) General obligation bonds authorized by the legislature;
- (3) Exchange of public lands, to the extent authorized by law;
- (4) Federal funds;
- (5) Private funds, financing, or donations; or
- (6) Any other means of financing the governor or the governor's designee may negotiate.

The land to be acquired shall include the unimproved lands that are not used for the hotel and resort proper or any appurtenant uses thereto, including but not limited to golf courses, stables, condominiums, parking areas, nurseries, and physical plant. Specifically, the land to be acquired shall include that unimproved land:

- (1) Located between the western edge of the improved portion of the Turtle bay property towards Kawela bay to the western boundary between the Turtle bay property and the private property at Kawela bay;
- (2) Located between the eastern edge of the improved portion of the Turtle bay property towards Kahuku point to the eastern boundary of the property, including Kahuku point; and
- (3) Located mauka of Kamehameha highway;

provided that the land acquired may include the improved property that is used for the Turtle Bay Hotel and Resort and any appurtenant uses thereto.

SECTION 3. If the governor, or the governor's designee finds that it is not feasible for the State to acquire sole interest of the property identified in section 2 of this Act, the governor, or the governor's designee, shall seek out and, if possible, enter into a cooperative agreement or agreements with private or other public entities

interested in preserving those unimproved portions of the identified property in their unimproved state for the purpose of cooperatively acquiring the property.

SECTION 4. The governor, or the governor's designee, shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2009 regarding its efforts to acquire the aforementioned lands and its recommendations for financing the purchase of the property.

SECTION 5. If an agreement to acquire the property is not reached within a reasonable time, as determined by the governor, or the governor's designee, the governor, or the governor's designee, shall exercise the power of eminent domain to acquire the unimproved property. For purposes of this Act, condemnation of the property shall not be subject to legislative disapproval.

SECTION 6. There is appropriated out of the special land and development fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2008-2009 for the purchase of the property commonly known as the Turtle Bay Hotel and Resort and the surrounding unimproved property, as identified in this Act or to commence the condemnation process of those lands.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 7. The appropriation made for the land acquisition authorized by this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all moneys from the appropriation unencumbered as of June 30, 2010, shall lapse as of that date.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 8. This Act shall take effect upon approval; provided that section 6 shall take effect on July 1, 2008.

(Approved June 4, 2008.)

## ACT 141

H.B. NO. 2605

A Bill for an Act Relating to the Armed Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 249, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§249- Exemption for national guard, military reserves, and other active duty military personnel claiming Hawaii as their residence of record. One noncommercial motor vehicle registered to a member of the national guard, military reserve, or armed service, including the Coast Guard, who is:**

- (1) Assigned to a unit in the State; and
- (2) A member in good standing,

shall be exempt from the vehicle weight tax provided for in this chapter.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on October 1, 2008.

(Approved June 5, 2008.)

### Note

1. Edited pursuant to HRS §23G-16.5.



A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:6-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of this article:

- ~~[(1) Obligation includes bonds, debentures, notes, or other evidences of indebtedness.~~
- ~~(2) Institution includes corporations, joint-stock associations, and business trusts.~~
- ~~(3) Net earnings available for fixed charges means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation, and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of such institution.~~
- ~~(4) Fixed charges includes interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.]~~

“Cash” includes cash equivalents.

“Cash equivalents” means highly-rated and highly-liquid investments or securities with a remaining term of ninety days or less and rated in the highest short-term category by a nationally recognized statistical rating organization recognized by the SVO. Cash equivalents include government money market mutual funds and class one money market mutual funds defined by the Purposes and Procedures Manual of the SVO, or its successor publication.

“Fixed charges” means interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

“Institution” means corporations, joint-stock associations, and business trusts.

“Net earnings available for fixed charges” means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation, and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of such institution.

“Obligation” means bonds, debentures, notes, or other evidence of indebtedness.

“Surplus as regards to policyholders” means the excess of the insurer’s admitted assets over its liabilities.

“SVO” means the Securities Valuation Office of the National Association of Insurance Commissioners.

~~[(5) Value] “Value” means fair value. Market value is the best evidence of fair value.”~~

SECTION 2. Section 431:6-103, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any limitation based upon the amount of the insurer’s assets or surplus shall relate to assets or surplus as shown by the insurer’s annual statement as of December 31 preceding date of investment.”

SECTION 3. Section 431:6-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding the provisions of section 431:6-321, no security or other investment shall be eligible for purchase or acquisition under this article unless it

is interest bearing or interest accruing or [~~dividend or~~] income paying, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit, the interest or income accruing thereon; except, that it may acquire real property and non-dividend paying securities as provided in this article. An insurer's aggregate investment in non-dividend paying securities shall not exceed the greater of twenty-five per cent of its admitted assets or fifty per cent of its surplus as regards to policyholders as defined in section 431:6-101."

SECTION 4. Section 431:6-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the investments required by subsection (a), an insurer shall [~~invest and keep invested its funds~~] maintain an amount aggregating not less than one hundred per cent of its reserves required by this code, in the following assets: cash [~~or~~], premiums in course of collection, reinsurance recoverable on paid losses, or [~~in~~] investments eligible in accordance with this article[~~;~~], including interest and dividends receivable on the investments."

SECTION 5. Section 431:6-302, Hawaii Revised Statutes, is amended to read as follows:

"**§431:6-302 Corporate obligations.** An insurer may invest any of its funds in obligations other than those eligible for investment under section 431:6-306 if they are [~~issued;~~]

- (1) Issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, or district thereof[~~;~~]; and [~~are qualified under any of the following:~~
- (1) ~~Obligations which are secured by adequate collateral security and bear fixed interest, if during each of any three, including the last two, of the five fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges, as defined in section 431:6-101, have been not less than one and one-fourth times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of the required collateral shall consist of stock other than stock meeting the requirements of section 431:6-303;~~
- (2) ~~Fixed interest bearing obligations, other than those described in item (1), if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer, have averaged per year not less than one and one-half times its average annual fixed charges applicable to the period, and if during the last year of the period, the net earnings have been not less than one and one-half times its fixed charges for the year; or~~
- (3) ~~Adjustment, income or other contingent interest obligations, if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times the sum of its annual fixed charges and its average maximum contingent interest applicable to the period, and if during each of [the] last two years of the period, the net earnings have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for the year.]~~
- (2) Filed with the SVO or are considered "filing exempt" by the Purposes and Procedures Manual of the SVO, or its successor publication."

SECTION 6. Section 431:6-303, Hawaii Revised Statutes, is amended to read as follows:

**“§431:6-303 Preferred or guaranteed stocks or shares.** An insurer may invest any of its funds, in an aggregate amount not exceeding fifteen per cent of its assets, in preferred or guaranteed stocks or shares, other than common stocks, of solvent institutions existing under the laws of the United States or of any state, district, or territory thereof, if all of the prior obligations and prior preferred stocks, if any, of ~~[such]~~ the institution at the date of acquisition by the insurer are [eligible]:

- (1) Eligible as investments under this article; and ~~[if qualified under either of the following:~~
  - (1) ~~Preferred stocks or shares shall be deemed qualified if:~~
    - (A) ~~The net earnings of the institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer must have averaged per year not less than one and one-half times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to the period; and~~
    - (B) ~~During each of the last two years of such period, the net earnings must have been not less than one and one-half times the sum of its fixed charges, contingent interest, and preferred dividend requirements for such year. The term preferred dividend requirements shall be deemed to mean cumulative or noncumulative dividends whether paid or not.~~
  - (2) ~~Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing institution meets the requirements of section 431:6-302(1), construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends.]~~
- (2) Filed with the SVO or are considered “filing exempt” by the Purposes and Procedures Manual of the SVO, or its successor publication.”

SECTION 7. Section 431:6-313, Hawaii Revised Statutes, is amended to read as follows:

**“§431:6-313 Foreign securities.** (a) An insurer authorized to transact insurance in a foreign country may invest any of its funds, in an aggregate amount not exceeding its deposit and reserve obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to those required pursuant to this article for investments in the United States.

(b) An insurer may invest any of its funds, in an aggregate amount not exceeding fifteen per cent of its assets, in addition to any amount permitted pursuant to subsection (a), in obligations of the governments of the Dominion of Canada, or of Canadian provinces, or municipalities, and in obligations of Canadian corporations, which have not been in default during the five years next preceding date of acquisition, and which are otherwise of equal quality to like United States public or corporate securities as prescribed in this article.

(c) In addition to investments permitted under subsections (a) and (b), an insurer may acquire foreign investments, including American Depository Receipts, or engage in investment practices with persons of or in foreign jurisdictions of substantially the same types as those permitted under this article; provided that:

- (1) The aggregate amount of foreign investments then held by the insurer under this subsection shall not exceed twenty per cent of its admitted assets; and
- (2) The aggregate amount of foreign investments then held by the insurer under this subsection in a single foreign jurisdiction shall not exceed ten per cent of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or three per cent of its admitted assets as to any other foreign jurisdiction.

(d) Investments acquired under this section shall be aggregated with investments of the same types made under all other sections of this article, and in a similar manner, for the purposes of determining compliance with limitations, if any, contained in the other sections.”

SECTION 8. Section 431:6-317, Hawaii Revised Statutes, is amended to read as follows:

“§431:6-317 Common stocks. [After satisfying the requirements of section 431:6-201, an insurer may invest any of its funds in common shares of stock in solvent United States corporations that qualify as a sound investment.] (a) An insurer may invest any of its funds in common shares of stock that are filed with the SVO or are considered “filing exempt” by the Purposes and Procedures Manual of the SVO, or its successor publication. In aggregate, an insurer’s amount of investment in common stocks, including investments made pursuant to section 431:6-322 and non-dividend paying stocks, shall not exceed the greater of twenty-five per cent of its admitted assets or one hundred per cent of its surplus as regards to policyholders as defined in section 431:6-101.

(b) An insurer may invest any of its funds in common shares of stock in solvent United States corporations after satisfying the requirements under section 431:6-201.

(c) An insurer’s aggregate amount of investment in non-dividend paying stocks is subject to the limitations of section 431:6-104.”

SECTION 9. Section 431:6-322, Hawaii Revised Statutes, is amended to read as follows:

“§431:6-322 Common trust funds[-]; mutual funds[-]; and exchanged traded funds. [An] (a) Subject to the limitations in subsections (b) and (c), an insurer may invest in:

- (1) A bank’s common trust fund as defined in Section 584 of the United States Internal Revenue Code of [1954, Section 584; and] 1986, as amended;
- (2) The securities of any open-end management type investment company or investment trust registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940, as amended, if the investment company or trust, other than one of which as a subsidiary of the insurer is investment adviser or principal underwriter, has a new value of not less than \$25,000,000 as of the date of investment by the insurer[-]; and
- (3) An exchange traded fund that is registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940, as amended, and is traded on a public exchange.

(b) In aggregate, an insurer’s amount of investment in common trust funds, mutual funds, and exchange traded funds, including investments made pursuant to section 431:6-317(a), shall not exceed the greater of twenty-five per cent of its admit-

ted assets or one hundred per cent of its surplus as regards to policyholders as defined in section 431:6-101. This limitation shall not apply to investments approved on the "Mutual Funds List" from the Purposes and Procedures Manual of the SVO, or its successor publication.

(c) An insurer may invest any of its funds in common trust funds, mutual funds, and exchange traded funds after satisfying the requirements of section 431:6-201."

SECTION 10. Section 431:6-601, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) For purposes of this section:

"Business entity" means a corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund trust, or other similar form of business organization, whether organized for-profit or not-for-profit.

"Class one money market mutual funds" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the SVO or any successor publication.

"Government money market mutual fund" means a money market mutual fund that at all times:

- (1) Invests only in obligations issued, guaranteed, or insured by the government of the United States or collateralized repurchase agreements composed of these obligations; and
- (2) Qualifies for investment without a reserve under the Purposes and Procedures of the SVO or any successor publication.

"Money market mutual fund" means a mutual fund that meets the conditions of 17 Code of Federal Regulations [~~part~~] Part 270.2a-7, under the Investment Company Act of 1940 (15 [~~U.S.C.~~-§] United States Code Section 80a-1 et seq.), as amended, or renumbered.

"Obligation" means a bond, note, debenture, trust certificate, including equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases and other evidence of indebtedness for the payment of money (or participation, certificates, or other evidence of an interest in any of the foregoing), whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.

"Qualified bank" means a national bank, state bank, or trust company that at all times is no less than adequately capitalized as determined by the standards adopted by the United States banking regulators and that is either regulated by state banking laws or is a member of the Federal Reserve System.

"Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.

"Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

"Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loans, securities, or equivalent securities to the insurer, either within a specified period of time or upon demand.

~~["SVO" means the Securities Valuation Office of the National Association of Insurance Commissioners.]~~

- (b) An insurer may acquire investments in investment pools that:

- (1) Invest only in:
  - (A) Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating) by a nationally-recognized statistical rating organization recognized by the SVO and have:
    - (i) A remaining maturity of three hundred ninety-seven days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven days; or
    - (ii) A remaining maturity of three years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate [~~“LIBOR”~~]) or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;
  - (B) Government money market mutual funds or class one money market mutual funds; or
  - (C) Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of section [431:6-322;] 431:6-318; or
- (2) Invest only in investments which an insurer may acquire under this article, if the insurer’s proportionate interest in the amount invested in these investments does not exceed the applicable limits of this article.”

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on January 1, 2009.

(Approved June 5, 2008.)

## ACT 143

H.B. NO. 2739

A Bill for an Act Relating to State Enterprise Zones.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 209E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§209E- Force majeure event; agricultural businesses.** If a business engaged in agricultural production or processing is:

- (1) Wholly or partially prevented from maintaining eligibility requirements under section 209E-9; or
- (2) Interrupted,

by reason of or through any force majeure event, then the business shall not be disqualified under this chapter. The business shall remain eligible for all tax incentives under this chapter during any period of time while experiencing conditions under paragraph (1) or (2) caused by a force majeure event, and the seven-year eligibility period shall be extended by an equivalent period of time. The business shall be as

prompt and diligent as practicable in providing the department with notice of a force majeure event or of any situation that may lead to a force majeure event.”

SECTION 2. Section 209E-1, Hawaii Revised Statutes, is amended to read as follows:

“(H)§209E-1(H) **Purpose.** It is declared that the health, safety, and welfare of the people of this [State] state are dependent upon the continual encouragement, development, growth, and expansion of the private sector, and that there are certain areas in the [State] state that need the particular attention of government to help attract private sector investment. Therefore, it is the purpose of this chapter to stimulate business, agricultural, and industrial growth in areas [which] that would result in neighborhood revitalization of those areas by means of regulatory flexibility and tax incentives.”

SECTION 3. Section 209E-2, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

“Force majeure event” means an event, including damaging weather or natural disasters such as epidemic disease, pest outbreak, high wind, thunderstorm, hail storm, tornado, fire, flood, earthquake, lava flow or other volcanic activity, drought, tidal wave, hurricane, or without limiting or restricting the foregoing in any way, any event reasonably beyond the control of, and not attributable to neglect by, an agricultural business.

“Joint employment” means an employment arrangement:

- (1) Between two or more employers to share an employee’s services, as for example, to interchange employees;
- (2) In which one employer acts directly or indirectly in the interest of the other employer or employers in relation to the employee; or
- (3) In which two or more employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control of the other employer.

“Leased employee” means an employee under a professional employment organization arrangement who is assigned to a particular client company on a substantially full-time basis for at least one year.”

2. By amending the definition of “full-time employee” to read:

““Full-time employee” means any employee, including a leased employee and an employee under a joint employment arrangement, for whom the employer is legally required to provide employee fringe benefits.”

3. By amending the definition of “qualified business” to read:

““Qualified business” means any corporation, partnership, or sole proprietorship authorized to do business in the [State] state that is qualified under section 209E-9, subject to the state corporate or individual income tax under chapter 235, and [is]:

- (1) Engaged in manufacturing, the wholesale sale of tangible personal property as defined in section 237-4, or a service business as defined in this chapter;
- (2) Engaged in producing agricultural products where the business is a producer as defined in section 237-5[;], or engaged in processing agricultural products, all or some of which were grown within an enterprise zone;

- (3) Engaged in research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products; or
- (4) Engaged in producing electric power from wind energy for sale primarily to a public utility company for resale to the public.”

SECTION 4. Section 209E-9, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Any business firm may be eligible to be designated a qualified business for purposes of this chapter if the business:

- (1) Begins the operation of a trade or business within an enterprise zone;
- (2) During each taxable year has at least fifty per cent of its enterprise zone establishment’s gross receipts attributable to the active conduct of trade or business within the enterprise zone; and
- (3) (A) Increases its average annual number of full-time employees by at least ten per cent by the end of its first tax year of participation[;], and
- ~~[(4) During]~~ during each subsequent taxable year at least maintains that higher level of employment[-]; or
- (B) Increases its gross sales of agricultural crops produced, or agricultural products processed within the enterprise zone by two per cent annually.

For business firms engaged in producing or processing agricultural products, receipts from value-added products made from crops grown within an enterprise zone and sold at retail pursuant to the limits of subsection (e) shall count toward the gross receipts requirement under paragraph (2).

(b) A business firm [~~also~~] may also be eligible to be designated a qualified business for purposes of this chapter if the business:

- (1) Is actively engaged in the conduct of a trade or business in an area immediately prior to an area being designated an enterprise zone;
- (2) Meets the requirements of subsection (a)(2); and
- (3) (A) Increases its average annual number of full-time employees employed at the business’ establishment or establishments located within the enterprise zone by at least ten per cent [annually.] by the end of the first year of operation, and by at least fifteen per cent by the end of each of the fourth, fifth, sixth, and seventh years of operation; provided that the percentage increase shall be based upon the employee count at the beginning of the initial year of operation within the enterprise zone; or
- (B) Increases its gross sales of agricultural crops produced, or agricultural products processed within the enterprise zone by two per cent annually.”

SECTION 5. Section 209E-11, Hawaii Revised Statutes, is amended to read as follows:

**“§209E-11 State general excise exemptions.** The department shall certify annually to the department of taxation that any qualified business is exempt from the payment of general excise taxes on the gross proceeds from the manufacture of tangible personal property, the wholesale sale of tangible personal property, the engaging in a service business by a qualified business, or the engaging in research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products[-]; provided that agricultural businesses other than those engaged in the production of genetically-engineered agricultural



products shall not be exempt from the payment of general excise taxes on the gross proceeds of agricultural retail sales. The gross proceeds received by a contractor licensed under chapter 444 shall be exempt from the general excise tax for construction within an enterprise zone performed for a qualified business within an enterprise zone. The exemption shall extend for a period not to exceed seven years[-]; provided that if a force majeure event occurs, then the period of time shall be tolled until the force majeure event ceases.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 2008; provided that section 209E-9(b)(3)(A) in section 4 of this Act shall only apply to enterprise zones established pursuant to chapter 209E, Hawaii Revised Statutes, after the effective date of this Act.

(Approved June 5, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 144**

S.B. NO. 2170

A Bill for an Act Relating to Public Land.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 82, Session Laws of Hawaii 2003, Section 2, as amended by Act 152, Session Laws of Hawaii 2007, is amended by amending the definition of “improved public lands” of section 663- , Hawaii Revised Statutes, in section 2 of the Act, to read as follows:

““Improved public lands” means lands designated as part of the state park system, parks, and parkways under chapter 184, or as part of a county’s park system, and lands which are part of the Hawaii statewide trail and access system under chapter 198D, excluding buildings and structures constructed upon such lands. For purposes of this part, “improved public lands” excludes ocean and submerged lands[-; and further excludes any public beach park falling within Act 190, Session Laws of Hawaii 1996, as amended by Act 101, Session Laws of Hawaii 1999].”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 5, 2008.)

**ACT 145**

S.B. NO. 2849

A Bill for an Act Relating to Agricultural Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii’s dependence on petroleum for over ninety per cent of its energy needs is more than any other state in the nation. This makes the State extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond the control of the

State. Furthermore, the continued consumption of conventional petroleum fuel and price volatility can negatively impact the viability of agricultural operations. At the same time, Hawaii has among the most abundant renewable energy resources in the world, in the form of solar, geothermal, wind, biomass, and ocean energy assets.

The legislature further finds that increased energy efficiency and use of renewable energy resources would increase Hawaii's energy self-sufficiency, achieving broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

To shape Hawaii's energy and agricultural future and achieve the goal of energy and food self-sufficiency for the state, our efforts must continue on all fronts, integrating new and evolving technologies, seizing upon opportunities to become more economically diversified, and providing incentives and assistance to address barriers. It is crucial to address the negative impacts that rising and volatile petroleum prices have on fuel and fertilizer.

The purpose of this Act is to:

- (1) Permit the use of lands in agricultural land use districts for agricultural-energy facilities when the production, storage, and distribution of renewable energy are integrated with an agricultural activity; and
- (2) Allow existing structures on plantation community subdivisions to be used or rehabilitated for employee rental housing at affordable rates for agricultural workers and agricultural support buildings for agricultural business operators and support services.

SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Agricultural districts shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry, and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind generated energy production for public, private, and commercial use;
- (5) Biofuel production as described in section 205-4.5(a)(15) for public, private, and commercial use;
- (6) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including [~~but not limited to~~] farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, agricultural-energy facilities as defined in section 205-4.5(a)(16), vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);
- (7) Wind machines and wind farms;
- (8) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
- (9) Agricultural parks;
- (10) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or

involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; and

(11) Open area recreational facilities.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.”

SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Within the agricultural district, all lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including [~~but not limited to~~] crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including [~~but not limited to~~] poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. “Farm dwelling”, as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including [~~but not limited to~~] mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the [~~above mentioned~~] above-mentioned uses and are permitted under section 205-2(d);
- (11) Agricultural parks;
- (12) Plantation community subdivisions, which as used in this [~~paragraph~~] chapter means [~~a~~] an established subdivision or cluster of employee housing, community buildings, and [~~aereage-established~~] agricultural

support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation [and in residential use]; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:

- (A) The employee housing is occupied by employees or former employees of the plantation[; provided that the employees or former employees shall] who have a property interest in the land;
  - (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
  - (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;
- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
- (14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;
- (15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuels processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

“Appurtenances” means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuels processing facilities.

“Biofuel processing facility” means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy[; or];

- (16) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

“Agricultural activity” means any activity described in paragraphs (1) to (3) of this subsection.

“Agricultural-energy enterprise” means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

“Agricultural-energy facility” means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

“Appurtenances” means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

or

[(16)] (17) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, “wireless communication antenna” means communications equipment that is either free-standing or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 5, 2008.)

**ACT 146**

S.B. NO. 3087

A Bill for an Act Relating to Contractor Suspension on Public Works Projects.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Currently, contractors can be suspended for failure to pay back wages and penalties, or after the third notice of violation if the second violation is within two years of the first violation and the third violation is within two years of the second violation. There is currently no method to debar contractors who cheat and get caught unless they fail to pay back wages, which rarely happens. State or county government agencies should not be in business with those who falsify payrolls or do not cooperate. Attaching suspension to the penalty provisions of section 104-22(b), Hawaii Revised Statutes, will create a clear line for those who are not willing to comply with the law. Chapter 104, Hawaii Revised Statutes, is a law imposed to even the playing field in bidding for public works jobs and pay a prevailing wage to workers. It is not unreasonable to impose a three-year suspension for those who are not willing to comply.

The purpose of this Act is to provide the department of labor and industrial relations with the ability to immediately suspend and begin debarment proceedings against contractors that purposely defraud the State on a public works project or do not cooperate with the department of labor and industrial relations in determining if there has been a violation of the prevailing wage law.

SECTION 2. Section 104-25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director shall suspend a person or firm as follows:

- (1) For a first or second violation, if a person or firm fails to pay wages found due, any penalty assessed, or both, the person or firm shall be immediately suspended from doing any work on any public work of a governmental contracting agency until all wages and penalties are paid in full; ~~and~~
- (2) For a third violation, the suspension shall be as prescribed in section 104-24(c); provided that, if the person or firm continues to violate this chapter or fails to pay wages found due or any penalty assessed, or both, then the contractor shall immediately be suspended from doing any work on any public work of a governmental contracting agency for a mandatory three-year period. If after the three-year suspension period the wages found due or penalties assessed are still unpaid, the suspension shall remain in force until payment is made in full[-]; or
- (3) For falsification of records, or for delay or interference with an investigation pursuant to section 104-22, the contractor shall be suspended for a period of three years."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 6, 2008.)

## ACT 147

S.B. NO. 2212

A Bill for an Act Relating to Crime.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 707-700, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Labor” means work of economic or financial value.

““Services” means a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Prostitution-related and obscenity-related activities as set forth in chapter 712 are forms of “services” under this section. Nothing in this chapter shall be construed to legitimize or legalize prostitution.”

SECTION 2. Section 707-720, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of kidnapping if the person intentionally or knowingly restrains another person with intent to:

- (a) Hold that person for ransom or reward;
- (b) Use that person as a shield or hostage;
- (c) Facilitate the commission of a felony or flight thereafter;
- (d) Inflict bodily injury upon that person or subject that person to a sexual offense;
- (e) Terrorize that person or a third person; ~~or~~
- (f) Interfere with the performance of any governmental or political function[-]; or
- (g) Unlawfully obtain the labor or services of that person, regardless of whether related to the collection of a debt.”

SECTION 3. Section 707-721, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of unlawful imprisonment in the first degree if the person knowingly restrains another person[:

- (a) ~~Under~~ under circumstances which expose the person to the risk of serious bodily injury[; ~~or~~
- (b) ~~In a condition of involuntary servitude].”~~

SECTION 4. Section 707-764, Hawaii Revised Statutes, is amended to read as follows:

“**§707-764 Extortion.** A person commits extortion if the person does any of the following:

- (1) Obtains, or exerts control over, the property, labor, or services of another with intent to deprive another of property, labor, or services by threatening by word or conduct to:
  - (a) Cause bodily injury in the future to the person threatened or to any other person;
  - (b) Cause damage to property or cause damage, as defined in section 708-890, to a computer, computer system, or computer network;
  - (c) Subject the person threatened or any other person to physical confinement or restraint;
  - (d) Commit a penal offense;
  - (e) Accuse some person of any offense or cause a penal charge to be instituted against some person;
  - (f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair the threatened person’s credit or business repute;
  - (g) Reveal any information sought to be concealed by the person threatened or any other person;
  - (h) Testify or provide information or withhold testimony or information with respect to another’s legal claim or defense;
  - (i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action;
  - (j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property that is not demanded or received for the benefit of the group that the defendant purports to represent; ~~[or]~~
  - (k) Destroy, conceal, remove, confiscate, or possess any actual or purported passport, or any other actual or purported government identification document, or other immigration document, of another person; or
- ~~[(4e)]~~ (l) Do any other act that would not in itself substantially benefit the defendant but ~~[which]~~ that is calculated to harm substantially some person with respect to the threatened person’s health, safety, business, calling, career, financial condition, reputation, or personal relationships;
- (2) Intentionally compels or induces another person to engage in conduct from which another has a legal right to abstain or to abstain from conduct in which another has a legal right to engage by threatening by word or conduct to do any of the actions set forth in paragraph (1)(a) through ~~[(4e)]~~ (l); or
- (3) Makes or finances any extortionate extension of credit, or collects any extension of credit by extortionate means.”

SECTION 5. Section 707-765, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of extortion in the first degree if the person commits extortion:

- (a) Of property, labor, or services the value of which exceeds \$200 in total during any twelve-month period; or
- (b) By making or financing any extortionate extension of credit, or by collecting any extension of credit by extortionate means.”

SECTION 6. Section 707-766, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of extortion in the second degree if the person commits extortion:

- (a) Of property, labor, or services the value of which exceeds \$50 during any twelve-month period; or
- (b) As set forth in section 707-764(2).”

SECTION 7. Section 707-767, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of extortion in the third degree if the person commits extortion of property, labor, or services.”

SECTION 8. Section 712-1202, Hawaii Revised Statutes, is amended to read as follows:

“**§712-1202 Promoting prostitution in the first degree.** (1) A person commits the offense of promoting prostitution in the first degree if the person knowingly:

- (a) Advances prostitution by compelling a person by [~~criminal coercion~~] force, threat, or intimidation to engage in prostitution, or profits from such coercive conduct by another; or
- (b) Advances or profits from prostitution of a person less than [~~sixteen~~] eighteen years old.

(2) Promoting prostitution in the first degree is a class B felony.

(3) As used in this section, “threat” means any of the actions listed in section 707-764(1).”

SECTION 9. Section 712-1203, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of promoting prostitution in the second degree if the person knowingly[=

- (a) ~~Advances~~] advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more [~~prostitutes; or~~
- (b) ~~Advances or profits from prostitution of a person less than eighteen years old.]~~ prostituted persons.”

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved June 6, 2008.)



A Bill for an Act Relating to the Intermediate Appellate Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 602, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§602- Subpoenas; oaths. The intermediate appellate court shall have the power to subpoena and compel the attendance of witnesses from any part of the state and to compel the production of books, papers, documents, or tangible things. Any judge of the intermediate appellate court may administer oaths.”

SECTION 2. No later than twenty days prior to the convening of the regular session of 2010, or as part of the report required in section 2 of Act 94, Session Laws of Hawaii 2006, the judiciary shall submit a report to the legislature on the number of times the intermediate appellate court has exercised the subpoena power granted by this Act, including a brief description of the circumstances giving rise to the need for each use.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, 2010.

(Approved June 6, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Family Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Existing law allows the court to order an investigation and report concerning the care, welfare, and custody of a minor child of the parties in a contested custody case. In such a case, investigators or professional personnel attached to or assisting the court conduct investigations and prepare reports that are made available to all interested parties and counsel before the hearing.

The purpose of this Act is to define the requirements of court-appointed investigators and professional personnel that assist the courts with child custody evaluations who shall hereafter be referred to as “child custody evaluators”.

SECTION 2. Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

“§571-46 **Criteria and procedure in awarding custody and visitation.** In the actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the final hearing, or any time during the

minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child, and the court may also consider frequent, continuing, and meaningful contact of each parent with the child unless the court finds that a parent is unable to act in the best interest of the child;
- (2) Custody may be awarded to persons other than the father or mother whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;
- (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court, hereinafter referred to as child custody evaluators, shall make investigations and reports which shall be made available to all interested parties and counsel before hearing, and the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence; provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated; and provided further that the court shall define the requirements to be a court-appointed child custody evaluator, the standards of practice, ethics, policies, and procedures required of court-appointed child custody evaluators in the performance of their duties for all courts, and the powers of the courts over child custody evaluators to effectuate the best interests of a child in a contested custody dispute pursuant to this section. Where there is no child custody evaluator available that meets the requirements and standards, or any child custody evaluator to serve indigent parties, the court may appoint a person otherwise willing and available.
- (5) The court may hear the testimony of any person or expert, produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;
- (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award;
- (7) Reasonable visitation rights shall be awarded to parents, grandparents, siblings, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;
- (8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guard-

- ian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify;
- (9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:
    - (A) The court shall consider as the primary factor the safety and well-being of the child and of the parent who is the victim of family violence;
    - (B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, or assault or causing reasonable fear of physical harm, bodily injury, or assault to another person; and
    - (C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation;
  - (10) A court may award visitation to a parent who committed family violence only if the court finds that adequate provision can be made for the physical safety and psychological well-being of the child and for the safety of the parent who is a victim of family violence;
  - (11) In a visitation order, a court may:
    - (A) Order an exchange of a child to occur in a protected setting;
    - (B) Order visitation supervised by another person or agency;
    - (C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
    - (D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;
    - (E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;
    - (F) Prohibit overnight visitation;
    - (G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;
    - (H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and
    - (I) Order the address of the child and the victim to be kept confidential;
  - (12) The court may refer but shall not order an adult who is a victim of family violence to attend, either individually or with the perpetrator of the family violence, counseling relating to the victim's status or behavior as a victim as a condition of receiving custody of a child or as a condition of visitation;

- (13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation; and
- (14) A supervised visitation center must provide: a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation and supervision by a person trained in security and the avoidance of family violence.”

SECTION 3. (a) The judiciary shall submit to the legislature no later than twenty days prior to the convening of the regular session of 2009, a report of its findings, recommendations, and resource requirements to implement the following:

- (1) Appointment of child custody evaluators who meet education, experience, training, professional licensing, continuing education, and other requirements;
- (2) Enforcement of comprehensive standards of practice and ethics for investigations, evaluations, and reporting, as related to child custody;
- (3) Monitoring and administrative practice and procedures as applicable, to process complaints against child custody evaluators and to take appropriate action; and
- (4) An administrative appeal process for both parties and child custody evaluators.

(b) The judiciary shall convene and obtain assistance from a child custody advisory task force to review and make findings and recommendations relating to standards, education, and regulatory oversight and control. Members of the task force shall be representatives from the following organizations:

- (1) National Association of Social Workers-Hawaii Chapter;
- (2) Hawaii Association of Marriage & Family Therapists;
- (3) Hawaii Psychological Association;
- (4) Hawaii Psychiatric Medical Association;
- (5) Hawaii Nurses Association;
- (6) Family Law Section of the Hawaii State Bar Association;
- (7) Child Law Section of the Hawaii State Bar Association;
- (8) Honolulu Family Court Professionals;
- (9) Department of the attorney general;
- (10) Child welfare division of the department of human services;
- (11) Professional and vocational licensing division of the department of commerce and consumer affairs;
- (12) Educational institutions with child and family expertise; and
- (13) Other organizations deemed appropriate by the judiciary.

(c) Task force meetings shall be open to the public but public testimony shall be allowed only upon request of the task force. The task force shall terminate upon the submittal of the judiciary’s report to the legislature pursuant to this section.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 6, 2008.)

A Bill for an Act Relating to Public Utilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii is especially vulnerable to the volatility in global oil markets. In November 2007, oil prices reached \$100 per barrel. Electric utilities will shift these high fuel costs to electric utility consumers in the form of higher electric utility rates. For example, residential electric rates on Kauai could reach as high as 50 cents per kilowatt hour.

The legislature finds that net energy metering may encourage more customers to seek to become eligible customer-generators to take advantage of the month-to-month carryover of unused credits associated with the production of excess customer-generated electricity. Furthermore, the legislature finds that amending the net energy metering statute will signal to the public that the legislature intends that electricity generated by residential and small commercial customer-generators should play a significant role in the State's net energy metering effort.

The purpose of this Act is to enhance Hawaii's net energy metering statute by providing that every electric utility shall reserve a portion of the utility's net energy metering component for electricity generated by eligible residential and small commercial customer-generators. The legislature intends that the reserved portion of the utility's net energy metering component shall be of a percentage sufficient to encourage residential and small commercial customer-generators to adopt renewable energy technologies that are eligible under Hawaii's net energy metering statute.

SECTION 2. Section 269-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every electric utility shall develop a standard contract or tariff providing for net energy metering and shall make this contract available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total rated generating capacity produced by eligible customer-generators equals .5 per cent of the electric utility's system peak demand; provided that the public utilities commission may ~~increase,~~ modify, by rule or order, the total rated generating capacity produced by eligible customer-generators ~~[to an amount above .5 per cent of the electric utility's system peak demand.];~~ provided further that the public utilities commission shall ensure that a percentage of the total rated generating capacity produced by eligible customer-generators shall be reserved for electricity produced by eligible residential or small commercial customer-generators. The public utilities commission may define, by rule or order, the maximum capacity for eligible residential or small commercial customer-generators. Notwithstanding the generating capacity requirements of this subsection, the public utilities commission may evaluate, on an island-by-island basis, the applicability of the generating capacity requirements of this subsection and, in its discretion, may exempt an island or a utility grid system from the generating capacity requirements.”

SECTION 3. The public utilities commission shall submit a report to the legislature of the following, if available:

- (1) Any rules, decisions, or orders submitted by the public utilities commission regarding the total rated generating capacity produced by eligible customer-generators;
- (2) Any rules, decisions, or orders submitted by the public utilities commission regarding the maximum capacity for eligible residential or small commercial customer-generators; and

- (3) Any results regarding the public utilities commission's evaluation of the applicability of the generating capacity requirements on an island-by-island basis, and any decisions to exempt an island or a utility grid system from the generating capacity requirements.

The report shall also include any recommendations or proposed legislation, and be submitted no later than twenty days prior to the convening of the 2009 regular session.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 6, 2008.)

## ACT 151

S.B. NO. 988

A Bill for an Act Relating to Photovoltaic Energy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature is in support of renewable energy programs to reduce dependence on imported fossil fuels and to promote the reduction of greenhouse gas emissions, while increasing energy security by minimizing the impacts of supply disruptions and pricing volatility.

The legislature finds that the high initial cost of purchasing renewable energy systems is a barrier to the installation and utilization of these types of technologies. The legislature also finds that the renewable energy income tax credit, the high cost of electricity, and other market-based incentives may not be sufficient to encourage, in particular, the use of photovoltaic systems throughout Hawaii.

Accordingly, the purpose of this Act is to encourage and authorize the public utilities commission to establish a ratepayer-funded photovoltaic rebate program to promote the use of this renewable energy technology to utility customers within electric utility service areas, if the public utilities commission determines after an assessment of the costs and benefits of such a program that it is in the public interest to establish such a program.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§269- Photovoltaic rebate program; establishment.** (a) The public utilities commission may establish a ratepayer-funded photovoltaic rebate program upon evaluating the costs and benefits of a rebate program and determining that a rebate program is in the public interest.

(b) To qualify for the photovoltaic rebate program, applicants shall comply with requirements and conditions established by the public utilities commission.

(c) Rebate amounts and other program specifications for the photovoltaic rebate program shall be established by the public utilities commission.

(d) The public utilities commission shall effectuate the purposes of this section by rules adopted pursuant to chapter 91 or order.

(e) The public utilities commission may delegate the administration of the photovoltaic rebate program to the public benefits fund administrator established pursuant to section 269-122.”

## ACT 152

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2008, and shall be repealed on June 30, 2013.

(Approved June 6, 2008.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 152

H.B. NO. 2971

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the report of the online learning task force established by Act 275, Session Laws of Hawaii 2007, provides a plan to the department of education for expanding online learning opportunities for students across the State. Online learning is a strategic vehicle that will define the department as a 21<sup>st</sup> century learning institution.

The purpose of this Act is to direct the department of education to adopt and implement recommendations and strategic goals contained in the task force's report.

SECTION 2. The department of education shall adopt the following recommendations of the online learning task force to:

- (1) Follow a two-pronged delivery model of services and continue to operate the Myron B. Thompson academy full-time cyber academy, or similar schools, as well as establish a Hawaii virtual learning network for supplemental programs;
- (2) Establish a task force to review the State's education policies, requirements, and oversight functions for congruency with the needs and potential of online learning;
- (3) Allow both parents and students to access information about online curriculum;
- (4) Develop and establish a mentoring and training program for online teachers, collaborating with the University of Hawaii department of educational technology as needed;
- (5) Develop and establish an online training program to increase the number of highly qualified teachers, administrators, and paraprofessionals;
- (6) Provide support and incentives to teachers who become qualified to teach online courses and for teachers who utilize online courses to incorporate project-based and work-relevant learning;
- (7) Standardize the procedure for granting credits for online coursework;
- (8) Assist schools with online standards-based college preparatory curriculum;
- (9) Expand credit recovery courses and remediation courses;
- (10) Emphasize online science, technology, engineering, and mathematics courses and aggressively work to offer certain online courses through the department, including algebra I, English I, eighth-grade math and English, and career guidance;
- (11) Expand distance education through interactive digital television;

- (12) Establish an online course and resource center to include training modules and other support resources;
- (13) Establish online and in-person tutoring and mentoring programs for students, partnering with the University of Hawaii as needed; and
- (14) Develop recommendations on appropriate funding mechanisms.

The department shall assess the digital literacy of teachers, students, and other personnel in order to ensure maximum success of the online learning programs. The above recommendations shall be implemented by the department in consultation with the full task force recommendations. The department shall systematically establish the infrastructure for online learning based on institution type, in the following order of priority: high schools (including charter high schools), middle and elementary schools, adult community schools, charter middle and elementary schools, the University of Hawaii system (particularly the community colleges), private secondary and post-secondary institutions (for a fee), and adult populations for remedial education and upgrading of workforce skill.

SECTION 3. This Act shall take effect on July 1, 2008, and be repealed on June 30, 2013.

(Approved June 9, 2008.)

## ACT 153

H.B. NO. 2730

A Bill for an Act Relating to Legal Requirements for Neighborhood Board Meetings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 92, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### “PART . NEIGHBORHOOD BOARD

#### **§92- Neighborhood board; notice and agenda; public input; quorum.**

(a) Any contrary provision in this chapter notwithstanding, the provisions of this part shall apply to neighborhood boards overseen by a neighborhood commission of the city and county of Honolulu, and such other neighborhood boards as may be created in other counties and overseen by a county-based commission.

(b) The agenda required to be included in written public notice of a neighborhood board meeting may include an opportunity for the board to receive public input on issues not specifically noticed for consideration at the forthcoming meeting.

(c) Any matter raised as part of the public input agenda allowed under subsection (b) may be discussed and information on the matter may be received by the board at the meeting; provided that the board shall not make a decision relating to the matter. The board may make decisions on matters originally raised as part of a public input agenda only at a later meeting, where the agenda for the meeting shall give notice of decision-making on the matter.

(d) A quorum for a meeting of a neighborhood board shall be required for:

- (1) Conducting official board business;
- (2) Discussions prior to and related to voting; and
- (3) Voting required to validate an act of the board as part of official board business.

A neighborhood board may receive information or testimony on a matter of official board business without a quorum; provided that the board shall not make a decision



on the issue. The board members, at the next meeting of the neighborhood board, shall report the matters presented as information or testimony.

**§92- Permitted interactions of neighborhood board members.** (a) Two or more members of a neighborhood board, but fewer than the number of members necessary to constitute a quorum for the board, may attend informational meetings or presentations on matters relating to official board business, including meetings of another entity, seminars, and community meetings; provided that the presentation is not specifically and exclusively organized for or directed toward members of the board.

(b) Neighborhood board members may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation allowed by subsection (a); and provided further that there is no commitment made relating to a vote on the issue. The board members, at the next duly noticed meeting of the neighborhood board, shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

**§92- Neighborhood board meeting; unanticipated events; public interest.** An unanticipated event that occurs after public notice of a neighborhood board meeting has been issued, but before the scheduled meeting, may be the subject of discussion at the scheduled meeting if timely action on the matter is necessary for public health, welfare, and safety. At a duly noticed meeting, a board may take action on an unanticipated event in the public interest that is not on the agenda in the same manner as if the board had held an emergency meeting to take action on the issue, pursuant to section 92-8.”

SECTION 2. This Act shall take effect upon its approval.

(Approved June 9, 2008.)

**ACT 154**

S.B. NO. 2150

A Bill for an Act Relating to Adult Protection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 346, part X, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“~~[PART X.]~~ ~~DEPENDENT~~ ADULT PROTECTIVE SERVICES”**

SECTION 2. Section 346-45, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The court shall maintain records of all adult protective proceedings under this chapter. All court documents and records pertaining to the action or proceeding shall be subject to inspection only by the ~~[dependent]~~ vulnerable adult, and ~~[his or her]~~ the vulnerable adult’s guardian, conservator, their respective attorneys, the guardian ad litem of the ~~[dependent]~~ vulnerable adult, and the other parties and their respective attorneys or guardians ad litem.”

SECTION 3. Section 346-221, Hawaii Revised Statutes, is amended to read as follows:

**“~~[H]§346-221[H]~~ Purpose; construction.** The legislature recognizes that citizens of the State who are ~~[elder and mentally or physically impaired]~~ vulnerable to abuse constitute a significant and identifiable segment of the population and are particularly subject to risks of abuse, neglect, and exploitation.

The legislature ~~[also]~~ recognizes that it is a person’s ~~[dependency status,]~~ vulnerability, not necessarily age, which is often encountered in cases of abuse, neglect, and exploitation. While advanced age alone is not sufficient reason to intervene in a person’s life, the legislature finds that many elders have become subjects of abuse ~~[and]~~, ~~neglect[-],~~ and exploitation. Substantial public interest exists to ensure that this segment of the population receives protection.

The legislature declares that the State shall develop and promote community services for the economic, social, and personal well-being and protection of its ~~[elder]~~ citizens who ~~[are mentally or physically impaired:]~~ may be vulnerable to abuse.

In taking this action, the legislature intends to protect vulnerable adults and place the fewest possible restrictions on personal liberty and to permit the exercise of constitutional rights by adults consistent with protection from abuse~~[-, neglect, and exploitation].~~”

SECTION 4. Section 346-222, Hawaii Revised Statutes, is amended to read as follows:

**“~~[H]§346-222[H]~~ Definitions.** For the purposes of this part:

“Abuse” means ~~[actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment]~~ any of the following, separately or in combination:

- (1) Physical abuse;
- (2) Psychological abuse;
- (3) Sexual abuse;
- (4) Financial exploitation;
- (5) Caregiver neglect; or
- (6) Self-neglect;

each as further defined in this chapter. Abuse does not include, and a determination of abuse shall not be based solely on, physical, psychological, or financial conditions that result when a vulnerable adult seeks, or when a caregiver provides or permits to be provided, treatment with the express consent of the vulnerable adult or in accordance with the vulnerable adult’s religious or spiritual practices.

~~[Abuse occurs where:~~

~~(1) Any dependent adult exhibits evidence of:~~

- ~~(A) Substantial or multiple skin bruising or any other internal bleeding;~~
- ~~(B) Any injury to skin causing substantial bleeding;~~
- ~~(C) Malnutrition;~~
- ~~(D) A burn or burns;~~
- ~~(E) Poisoning;~~
- ~~(F) The fracture of any bone;~~
- ~~(G) A subdural hematoma;~~
- ~~(H) Soft tissue swelling;~~
- ~~(I) Extreme physical pain; or~~
- ~~(J) Extreme mental distress which includes a consistent pattern of actions or verbalizations including threats, insults, or harassment, that humiliates, provokes, intimidates, confuses, and frightens the dependent adult;~~

and the injury is not justifiably explained, or where the history given is at variance with the degree or type of injury, or circumstances indicate that the injury is not the product of an accidental occurrence;

- (2) Any dependent adult has been the victim of nonconsensual sexual contact or conduct, including but not limited to:
  - (A) Sexual assault, molestation, sexual fondling, incest, prostitution;
  - (B) Obscene or pornographic photographing, filming, or depiction; or
  - (C) Other similar forms of sexual exploitation;
- (3) Any dependent adult is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision;
- (4) Any dependent adult is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; however, this paragraph shall not apply when such drugs are provided to the dependent adult pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;
- (5) There has been a failure to exercise that degree of care toward a dependent adult which a reasonable person with the responsibility of a caregiver would exercise, including, but not limited to, failure to:
  - (A) Assist in personal hygiene;
  - (B) Provide necessary food, shelter, and clothing;
  - (C) Provide necessary health care, access to health care, or prescribed medication;
  - (D) Protect a dependent adult from health and safety hazards; or
  - (E) Protect against acts of abuse by third parties;
- (6) Any dependent adult appears to lack sufficient understanding or capacity to make or communicate responsible decisions concerning the dependent adult's person, and appears to be exposed to a situation or condition which poses an imminent risk of death or risk of serious physical harm; or
- (7) There is financial and economic exploitation. For the purpose of this part, "financial and economic exploitation" means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent adult's money, real property, or personal property. "Financial and economic exploitation" can include but is not limited to:
  - (A) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
  - (B) The unauthorized taking of personal assets;
  - (C) The misappropriation, misuse, or transfer of moneys belonging to the dependent adult from a personal or joint account; or
  - (D) The intentional or negligent failure to effectively use a dependent adult's income and assets for the necessities required for the person's support and maintenance.

The exploitations may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.]

"Capacity" means the ability to understand and appreciate the nature and consequences of making decisions concerning one's person or to communicate [such] these decisions.

"Caregiver" means any person who has knowingly and willingly assumed, on a part-time or full-time basis, the care, supervision, or physical control of, or who has a legal or contractual duty to care for the health, safety, and welfare of a vulnerable adult.

“Caregiver neglect” means the failure of a caregiver to exercise that degree of care for a vulnerable adult that a reasonable person with the responsibility of a caregiver would exercise within the scope of the caregiver’s assumed, legal or contractual duties, including but not limited to the failure to:

- (1) Assist with personal hygiene;
- (2) Protect the vulnerable adult from abandonment;
- (3) Provide, in a timely manner, necessary food, shelter, or clothing;
- (4) Provide, in a timely manner, necessary health care, access to health care, prescribed medication, psychological care, physical care, or supervision;
- (5) Protect the vulnerable adult from dangerous, harmful, or detrimental drugs, as defined in section 712-1240; provided that this paragraph shall not apply to drugs that are provided to the vulnerable adult pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;
- (6) Protect the vulnerable adult from health and safety hazards; or
- (7) Protect the vulnerable adult from abuse by third parties.

“Court” means the family court [having jurisdiction over a matter under this part].

“Department” means the department of human services and its authorized representatives.

“Dependent adult” means any adult who, because of mental or physical impairment is dependent upon another person, a care organization, or a care facility for personal health, safety, or welfare.]

“Director” means the director of human services.

“Emergency medical treatment” means [those services] any service necessary to maintain a person’s physical health and without which there is a reasonable belief that the person will suffer irreparable harm or death.

“Financial exploitation” means the wrongful taking, withholding, appropriation, or use of a vulnerable adult’s money, real property, or personal property, including but not limited to:

- (1) The breach of a fiduciary duty, such as the misuse of a power of attorney or the misuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
- (2) The unauthorized taking of personal assets;
- (3) The misappropriation or misuse of moneys belonging to the vulnerable adult from a personal or joint account; or
- (4) The failure to effectively use a vulnerable adult’s income and assets for the necessities required for the vulnerable adult’s support and maintenance, by a person with a duty to expend income and assets on behalf of the vulnerable adult for such purposes.

Financial exploitation may be accomplished through coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.

“Imminent abuse” means that there exists reasonable cause to believe that abuse will occur or recur within the next ninety days.]

“Party” means those persons, care organizations, or care facilities entitled to notice of proceedings under sections 346-237 and 346-238, including any state department or agency that is providing services and treatment to a [dependent] vulnerable adult in accordance with a protective services plan.

“Physical abuse” means:

- (1) The nonaccidental infliction of physical or bodily injury, pain, or impairment, including but not limited to hitting, slapping, causing burns or bruises, poisoning, or improper physical restraint; or

- (2) Causing physical injuries that are not justifiably explained or where the history given for an injury is at variance with the degree or type of injury.

“Protective services plan” means a specific written plan, prepared by the department, ~~[setting] that sets~~ forth the specific services and treatment to be provided to a ~~[dependent] vulnerable~~ adult.

“Psychological abuse” means the infliction of mental or emotional distress by use of threats, insults, harassment, humiliation, provocation, intimidation, or other means that profoundly confuse or frighten a vulnerable adult.

“Self-neglect” means:

- (1) A vulnerable adult’s inability or failure, due to physical or mental impairment, or both, to perform tasks essential to caring for oneself, including but not limited to:
  - (A) Obtaining essential food, clothing, shelter, and medical care;
  - (B) Obtaining goods and services reasonably necessary to maintain minimum standards of physical health, mental health, emotional well-being, and general safety; or
  - (C) Management of one’s financial assets and obligations to accomplish the activities in subparagraphs (A) and (B);

and
- (2) The vulnerable adult appears to lack sufficient understanding or capacity to make or communicate responsible decisions and appears to be exposed to a situation or condition that poses an immediate risk of death or serious physical harm.

“Sexual abuse” means nonconsensual sexual contact or conduct caused by another person, including but not limited to:

- (1) Sexual assault, molestation, sexual fondling, incest, or prostitution; or
- (2) Pornographic photographing, filming, or depiction.

“Vulnerable adult” means a person eighteen years of age or older who, because of mental, developmental, or physical impairment, is unable to:

- (1) Communicate or make responsible decisions to manage the person’s own care or resources;
- (2) Carry out or arrange for essential activities of daily living; or
- (3) Protect oneself from abuse, as defined in this part.”

SECTION 5. Section 346-223, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§346-223[H]~~ **Jurisdiction; venue.** The family court shall have jurisdiction ~~[in]~~ over protective proceedings under this part ~~[concerning any dependent] that concern a vulnerable~~ adult who was or is found within the judicial circuit at the time ~~[such] the~~ facts and circumstances occurred, were discovered, were reported to the department, which constitute the basis for a finding that the ~~[person has been abused and] vulnerable adult has incurred abuse or is [threatened with imminent abuse;] in danger of abuse if immediate action is not taken;~~ provided that the protective proceedings under this part ~~[are] shall~~ not be considered exclusive and shall not preclude ~~[the use of]~~ any other criminal, civil, or administrative remedy. The protective proceedings under this part shall be held in the judicial circuit in which the ~~[dependent] vulnerable~~ adult resides at the time of the filing of the petition or in which the ~~[dependent] vulnerable~~ adult has assets.”

SECTION 6. Section 346-224, Hawaii Revised Statutes, is amended to read as follows:

**“[H§346-224(H)] Reports.** (a) The following persons who, in the performance of their professional or official duties, know or have reason to believe that a [dependent] vulnerable adult has [been abused and is threatened with imminent abuse] incurred abuse or is in danger of abuse if immediate action is not taken shall promptly report the matter orally to the department [of human services]:

- (1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, treats, or provides other professional or specialized services to [dependent adults,] a vulnerable adult, including [but not limited to,] physicians, physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private agency or institution providing social, medical, hospital, or mental health services, including financial assistance;
- (3) Employees or officers of any law enforcement agency, including [, but not limited to,] the courts, police departments, correctional institutions, and parole or probation offices;
- (4) Employees or officers of any adult residential care home, adult day care center, or similar institution; [and]
- (5) Medical examiners or coroners [-]; and
- (6) Social workers licensed pursuant to chapter 467E and non-licensed persons employed in a social worker position pursuant to section 467E-6(2).

(b) The initial oral report required by subsection (a) shall be followed as soon as possible by a written report to the department; provided that [where] if a police department is the initiating agency, a written report shall not be required unless the police department [has declined] declines to take further action and the department informs the police department that [it] the department intends to [pursue the matter of the orally reported incident] investigate the oral report of abuse. [All written reports] A written report shall contain [the]:

- (1) The name and address of the [dependent] vulnerable adult [and], if known;
- (2) The name and address of the [person who or care organization or care facility which] party who is alleged to have committed or been responsible for the [dependent adult] abuse, if known; [the]
- (3) The nature and extent of the [dependent] vulnerable adult's injury or harm; and [any]
- (4) Any other information the reporter believes [might] may be helpful in establishing the cause of the [dependent adult] abuse.

(c) This section shall not prohibit any [of the persons enumerated in subsection (a)] person from reporting [incidents which those persons have] an incident that the person has reason to believe [involve] involves abuse [which] that came to [their] the person's attention in [any] a private or nonprofessional capacity.

(d) Any [other] person not enumerated in subsection (a) who has reason to believe that a [dependent] vulnerable adult [has been abused] has incurred abuse or is [threatened with imminent abuse] in danger of abuse if immediate action is not taken may report the matter orally to the department.

(e) Any person who knowingly fails to report as required by this section or who willfully prevents another person from reporting pursuant to this section shall be guilty of a petty misdemeanor.

(f) The department shall maintain a central registry of reported cases.

(g) Nothing in this section shall require a member of the clergy to report communications that are protected under rule 506 of chapter 626.”

SECTION 7. Section 346-225, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§346-225]]~~ **Confidentiality of reports.** ~~[All reports]~~ A report made pursuant to this part, including the identity of the reporting person~~[-, as well as]~~ and all records of ~~[such reports, are]~~ the report, shall be confidential and any person who makes an unauthorized disclosure of a report or records of a report ~~[under this part]~~ shall be guilty of a misdemeanor. The director ~~[of human services]~~ may adopt, amend, or repeal rules, pursuant to chapter 91, to provide for the confidentiality of reports and records, and for the authorized disclosure of reports and records.”

SECTION 8. Section 346-226, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§346-226]]~~ **Access to records.** Records of a ~~[dependent]~~ vulnerable adult shall be obtained by the department or the ~~[dependent]~~ vulnerable adult’s court-appointed guardian ad litem with the written consent of the ~~[dependent]~~ vulnerable adult or ~~[that person’s]~~ the vulnerable adult’s representative, or by court order. Any person who reports to the department under section 346-224, upon demand of the department, shall provide all information related to the alleged incident of ~~[dependent adult]~~ abuse ~~[or neglect],~~ including~~[-, but not limited to,]~~ financial records and medical reports, which were not included in the written report submitted pursuant to section 346-224(b).”

SECTION 9. Section 346-227, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§346-227]]~~ **Investigation.** Upon receiving a report that abuse of a ~~[dependent]~~ vulnerable adult has occurred ~~[and is imminent,]~~ or is in danger of occurring if immediate action is not taken, the department shall cause an investigation to be commenced in accordance with this part as the department deems appropriate.”

SECTION 10. Section 346-228, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§346-228]]~~ **Action upon investigation.** Upon investigation the department shall take action ~~[toward preventing further]~~ to prevent abuse and shall have the authority to do any or all of the following:

- (1) Resolve the matter in an informal fashion as is appropriate under the circumstances;
- (2) Exercise its right of entry under section 346-229;
- (3) Seek an order for immediate protection;
- (4) Seek a temporary restraining order;
- (5) File a petition with the court under this part; and
- (6) Seek any protective or remedial actions authorized by law.”

SECTION 11. Section 346-229, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§346-229]]~~ **Right of entry.** (a) An employee of the department engaged in an investigation under this part shall be authorized to visit and communicate with the ~~[dependent]~~ vulnerable adult who is the subject of the report. Any person intentionally or knowingly obstructing or interfering with the department’s

access to or communication with the [dependent] vulnerable adult shall be guilty of a misdemeanor.

(b) Any employee of the department engaged in an investigation under this part, having probable cause to believe that a [dependent] vulnerable adult will be physically injured through abuse before a court order for entry can be obtained, without a warrant, may enter upon the premises where the [dependent] vulnerable adult may be found for the purpose of ascertaining that person's welfare. Where a warrantless entry is authorized under this section, the employee of the department may request the assistance of a police officer to gain entrance."

SECTION 12. Section 346-230, Hawaii Revised Statutes, is amended to read as follows:

**"§346-230 Termination of services.** (a) The department shall act only with the consent of the [victim,] vulnerable adult, unless the department obtains court authorization to provide necessary services, as provided in section 346-231. Investigation and services provided under this part shall be immediately terminated if:

- (1) The [dependent] vulnerable adult has the capacity to consent and either does not consent or withdraws consent to the receipt of protective services; [or]
- (2) The department determines that protection is no longer needed under this part; or
- (3) The court so orders.

(b) Upon the department's determination that protective services are no longer needed, the [dependent] vulnerable adult shall be referred to the agency responsible for follow-up services. For the mentally ill, mentally retarded, or developmentally disabled adult, the state agency designated to provide services shall be the department of health."

SECTION 13. Section 346-231, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) If the department believes that a person is a [dependent] vulnerable adult and it appears probable that the [dependent] vulnerable adult has [~~been abused and is threatened with imminent abuse unless~~] incurred abuse or is in danger of abuse if immediate action is not taken[;] and the [dependent] vulnerable adult consents, or if the [dependent] vulnerable adult does not consent and there is probable cause to believe that the [dependent] vulnerable adult lacks the capacity to make decisions concerning the [dependent] vulnerable adult's person, the department shall seek an order for immediate protection in accordance with this section."

2. By amending subsections (c), (d), and (e) to read:

"(c) Upon finding that the person is a [dependent] vulnerable adult and that there is probable cause to believe that the [dependent] vulnerable adult has [~~been abused and is threatened with imminent abuse unless~~] incurred abuse or is in danger of abuse if immediate action is not taken[;] and the [dependent] vulnerable adult consents, or if the [dependent] vulnerable adult does not consent and there is probable cause to believe that the [dependent] vulnerable adult lacks the capacity to make decisions concerning the [dependent] vulnerable adult's person, the court shall issue an order for immediate protection. This order may include[~~, but is not limited to~~]:

- (1) An authorization for the department to transport the person to an appropriate medical or care facility;
- (2) An authorization for medical examinations;
- (3) An authorization for emergency medical treatment; and



- (4) ~~[Such]~~ Any other matters as may prevent ~~[imminent]~~ immediate abuse, pending a hearing under section 346-232.
- (d) The court may also make orders as may be appropriate to third persons, including temporary restraining orders, enjoining them from:
- (1) Removing the ~~[dependent]~~ vulnerable adult from the care or custody of another;
  - (2) ~~[Abusing]~~ Actions that would result in abuse of the ~~[dependent]~~ vulnerable adult;
  - (3) Living at the ~~[dependent]~~ vulnerable adult's residence;
  - (4) Contacting the ~~[dependent]~~ vulnerable adult in person or by telephone;
  - (5) Selling, removing, or otherwise disposing of the ~~[dependent]~~ vulnerable adult's personal property;
  - (6) Withdrawing ~~[these]~~ funds from any bank, savings and loan association, credit union, or other financial institution, or from a stock account in which the ~~[dependent]~~ vulnerable adult has an interest;
  - (7) Negotiating any instruments payable to the ~~[dependent]~~ vulnerable adult;
  - (8) Selling, mortgaging, or otherwise encumbering any interest that the ~~[dependent]~~ vulnerable adult has in real property;
  - (9) Exercising any powers on behalf of the ~~[dependent]~~ vulnerable adult by representatives of the department, any court-appointed guardian or guardian ad litem, or any official acting on ~~[their]~~ the vulnerable adult's behalf; and
  - (10) Engaging in any other specified act ~~[which,]~~ that, based upon the facts alleged, would constitute harm or present a ~~[threat]~~ danger of ~~[imminent]~~ immediate harm to the ~~[dependent]~~ vulnerable adult or would cause the loss of the ~~[dependent]~~ vulnerable adult's property.
- (e) Court orders under section 346-232 and this section may be obtained upon oral or written application by the department, without notice and without a hearing. Any oral application shall be reduced to writing within twenty-four hours. The court may issue its order orally~~;~~; provided that it shall reduce the order to writing as soon as possible thereafter and in any case not later than twenty-four hours after the court received the written application. Certified copies of the application and order shall be personally served upon the ~~[dependent]~~ vulnerable adult and any other person or entity affected by the order together with the notice of the order to show cause hearing in section 346-232."

SECTION 14. Section 346-232, Hawaii Revised Statutes, is amended to read as follows:

**"[H]§346-232[H] Order to show cause hearing.** (a) When a written order for immediate protection is issued, the court shall hold a hearing on the application for immediate protection, no later than seventy-two hours after issuance of the written order, excluding any Saturday or Sunday, requiring cause to be shown why the order or orders should not continue. The department shall make arrangements to have the ~~[dependent]~~ vulnerable adult attend the hearing or show cause why the ~~[dependent]~~ vulnerable adult cannot attend.

(b) When the court finds that there is probable cause to believe that a ~~[dependent]~~ vulnerable adult has ~~[been abused and is threatened with imminent abuse,]~~ incurred abuse or is in danger of abuse if immediate action is not taken, and the ~~[dependent]~~ vulnerable adult consents, or if the ~~[dependent]~~ vulnerable adult does not consent and the court finds that there is probable cause to believe that the ~~[dependent]~~ vulnerable adult lacks the capacity to make decisions concerning the ~~[dependent]~~ vulnerable adult's person, the court may continue or modify any order pending an

adjudicatory hearing on the petition. These orders may include orders for the [~~dependent~~] vulnerable adult's temporary placement and ordinary medical care.

(c) The parties personally or through counsel may stipulate to the entry or continuance of such orders as the court deems to be in the best interest of the [~~dependent~~] vulnerable adult, and the court shall set the case for an adjudicatory hearing as soon as it is practical."

SECTION 15. Section 346-233, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§346-233]]~~ **Petition.** (a) A petition invoking the jurisdiction of the court under this part shall be entitled "In the matter of the protection of \_\_\_\_\_," and shall be verified.

(b) The petition shall set forth with specificity the:

- (1) Reasons the person is considered to be a [~~dependent~~] vulnerable adult;
- (2) Facts [~~which~~] that bring the [~~dependent~~] vulnerable adult within this part;
- (3) Name, birth date, sex, and residence address of the [~~dependent~~] vulnerable adult;
- (4) Names and addresses of any living persons, or entities required to be notified pursuant to section 346-237; and
- (5) If appropriate, allegations describing any lack of capacity of the [~~dependent~~] vulnerable adult."

SECTION 16. Section 346-234, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§346-234]]~~ **Guardian ad litem; counsel.** (a) In any case where the court has reason to believe that a [~~dependent~~] vulnerable adult or any other party lacks the capacity to effectively make decisions concerning the party's person, it may appoint a guardian ad litem to represent the interests of that party throughout the pendency of proceedings under this part. The court shall appoint counsel for the [~~dependent~~] vulnerable adult at any time where it finds that the [~~dependent~~] vulnerable adult requires a separate legal advocate and is unable to afford private counsel.

(b) The court may order reasonable costs and fees of the guardian ad litem to be paid by the party for whom the guardian ad litem is appointed, if that party has sufficient financial resources to pay [~~such~~] the costs and fees. The court may also order the appropriate parties to pay or reimburse reasonable costs and fees of the guardian ad litem and counsel appointed for the [~~dependent~~] vulnerable adult."

SECTION 17. Section 346-236, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§346-236]]~~ **Permanent changes.** Permanent changes in the living situation of [~~an abused dependent~~] a vulnerable adult who has incurred abuse shall not ordinarily be made under authority of this part. If permanent changes in the living situation or nonemergency medical treatment are necessary, the appropriate guardianship, or civil commitment action shall be initiated pursuant to applicable state law."

SECTION 18. Section 346-237, Hawaii Revised Statutes, is amended to read as follows:

“§346-237 Notice of proceedings. (a) After a petition has been filed, the matter shall be set for hearing and a notice of hearing shall be issued to all parties to the proceeding. The parties to the proceeding shall include:

- (1) The ~~[dependent]~~ vulnerable adult;
- (2) Any caregiver ~~[or facility in which the dependent adult resides or is a patient;]~~ of the vulnerable adult;
- (3) A representative of the facility in which the vulnerable adult resides or is a patient;
- ~~[(3)]~~ (4) The spouse and adult children of the ~~[dependent]~~ vulnerable adult;
- ~~[(4)]~~ (5) The parents of the ~~[dependent]~~ vulnerable adult, unless waived by the court for good cause;
- ~~[(5)]~~ (6) Any guardian or conservator who may have been appointed; and
- ~~[(6)]~~ (7) Any other person or entity affected by the order for immediate protection.

(b) Where the name or whereabouts of a potential party is unknown, the court may require the petitioner to set forth the reasonable efforts the petitioner made to ascertain the party’s name or whereabouts and why the petitioner has been unable to determine those facts.”

SECTION 19. Section 346-238, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Service of the notice shall be made by delivery of a copy thereof together with a certified copy of the petition to each person or entity to be given notice either by personal service, by certified mail, return receipt requested and addressed to the last known address, by publication, or by other means authorized by the court. Upon a showing of good cause, the court may waive notice to any party except the ~~[dependent]~~ vulnerable adult.”

SECTION 20. Section 346-239, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§346-239~~]]~~ **Required findings concerning postponed hearings.** Except as otherwise provided, no hearing shall be delayed upon the grounds that a party other than the ~~[dependent]~~ vulnerable adult is not present at the hearing or has not been served with a copy of the order for immediate protection or the petition, where reasonable efforts have been made to effect service and it would be detrimental to the ~~[dependent]~~ vulnerable adult to postpone the proceedings until service can be made. Whenever a hearing is delayed or postponed under this section, the court shall enter a finding that it will not be detrimental to the ~~[dependent]~~ vulnerable adult and shall also specify what additional measures shall be undertaken to effect service.”

SECTION 21. Section 346-240, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

“(a) When a petition has been filed, the court shall set a return date hearing to be held within thirty days of the filing of the petition. On the return date, the parties personally or through counsel may stipulate to the entry or continuance of the orders as the court deems to be in the best interests of the ~~[dependent]~~ vulnerable adult, and the court shall set the case for an adjudicatory hearing as soon as is practical.

(b) In an adjudicatory hearing, the court shall determine whether the person is a ~~[dependent]~~ vulnerable adult, and whether the ~~[dependent]~~ vulnerable adult has ~~[been abused and is threatened with imminent abuse,]~~ incurred abuse or is in danger of abuse if immediate action is not taken, based upon a preponderance of the evidence. Evidence ~~[which]~~ that is contained in a written report, study, or examination shall be admissible~~;~~; provided that the maker of the written report, study, or ex-

amination be subject to direct and cross-examination upon demand when the maker is reasonably available. A social worker employed by the department in the area of adult protective services shall be presumed to be qualified to testify as an expert in the field of protective services.

(c) If facts sufficient to sustain the petition are established in court, or are stipulated to by all parties, the court shall enter an order finding that the [dependent] vulnerable adult has ~~[been abused and threatened with imminent abuse]~~ incurred abuse or is in danger of abuse if immediate action is not taken and shall state the grounds for the finding. The court shall also make a finding concerning the capacity of the [dependent] vulnerable adult to effectively make decisions concerning personal needs or property ~~[or both]~~. If the capacity of the [dependent] vulnerable adult is at issue, the court shall require that the [dependent] vulnerable adult be examined by a psychiatrist or other physician who is skilled in evaluating the particular area in which the [dependent] vulnerable adult is alleged to lack capacity before making any finding that the [dependent] vulnerable adult lacks capacity. If there is no finding that the [dependent] vulnerable adult lacks capacity to make ~~[such]~~ regarding personal needs or property and if the [dependent] vulnerable adult does not give consent, the court shall not have authority to proceed further and the court shall dismiss the case.”

SECTION 22. Section 346-241, Hawaii Revised Statutes, is amended by amending subsections (b) to (d) to read as follows:

“(b) The proposed protective order may include any of the provisions set forth in section 346-231, and, in addition may include an order that:

- (1) The person inflicting abuse on the [dependent] vulnerable adult participate in counseling or therapy as the court deems appropriate;
  - (2) Any party report to the department any violation of the protective order or protective services plan;
  - (3) The department make periodic home visits to the [dependent] vulnerable adult; and
  - (4) The department monitor compliance with the order.
- (c) The proposed protective services plan shall set forth the following:
- (1) Specific services or treatment to be provided to the [dependent] vulnerable adult and the specific actions the parties shall take;
  - (2) Specific responsibilities that the parties shall assume;
  - (3) Period during which the services shall be provided;
  - (4) Dates by which the actions shall be completed;
  - (5) Specific consequences that may be reasonably anticipated to result from a party’s failure to comply with any terms and conditions of the plan; and
  - (6) Steps that shall be necessary to terminate the court’s jurisdiction.

(d) In preparing such a proposed protective order, the department shall seek to impose the least restrictive limitation on the freedom and liberties of the [dependent] vulnerable adult. To the greatest extent possible, the [dependent] vulnerable adult should be permitted to participate in decisions concerning the [dependent] vulnerable adult’s person, or property, or both.”

SECTION 23. Section 346-242, Hawaii Revised Statutes, is amended to read as follows:

“**§346-242 Review hearings.** Except for good cause shown, the court shall set each case for a review hearing not later than six months after the date that a protective order and protective services plan are ordered by the court. Thereafter, the court shall review the matter at intervals of not longer than six months until the

court's jurisdiction has been terminated. The department and the guardian ad litem, if any, shall submit a written report, with copies to the parties or their counsel, at least fifteen days prior to the date set for each review. The report shall evaluate whether the parties have complied with the terms and conditions of the protective order and protective services plan; shall recommend any modification to the order or plan; and shall recommend whether the court shall retain jurisdiction or terminate the case. At each review, the court shall determine whether the parties have complied with the terms and conditions of the order and plan; enforce [such] sanctions for noncompliance as may be appropriate; and order [such] revisions to the existing order or plan as are in the best interests of the [dependent] vulnerable adult. At each review, the court shall make an express finding as to whether it shall retain jurisdiction or terminate the case, and, in each instance, shall state the basis for its action."

SECTION 24. Section 346-247, Hawaii Revised Statutes, is amended to read as follows:

"[§346-247] **Payment for service or treatment provided to a party.** Whenever service, treatment, care, or support of a [dependent] vulnerable adult is provided under this part, the persons or legal entities who may be legally obligated to pay for the service, treatment, care, or support of the [dependent person,] vulnerable adult, may be ordered by the court to pay the cost of the service, care, support, or treatment provided to the [dependent] vulnerable adult in whole or in part, after notice and hearing."

SECTION 25. Section 346-249, Hawaii Revised Statutes, is amended to read as follows:

"[§346-249] **Cooperation.** Every public official or department shall render all assistance and cooperation within the official's or department's power and [which] that may further the purpose and objectives of this part. The department and the court may seek the cooperation of organizations whose objectives are to protect or aid [dependent] vulnerable adults."

SECTION 26. Section 571-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in sections 603-21.5 and 604-8, the court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by the child's parent or guardian or by any other person having the child's legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, or 302A-1135, whether or not included in other provisions of this paragraph or paragraph (2);
- (2) To try any adult charged with:
  - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
  - (B) An offense, other than a felony, against the person of the defendant's husband or wife;
  - (C) Any violation of an order issued pursuant to chapter 586; or
  - (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2), the court, in its discretion, may waive its jurisdiction over the offense charged;

- (3) In all proceedings under chapter 580, and in all proceedings under chapter 584;

- (4) In proceedings under chapter 575, the Uniform Desertion and Nonsupport Act, and under chapter 576B, the Uniform Interstate Family Support Act;
- (5) For commitment of an adult alleged to be mentally defective or mentally ill;
- (6) In all proceedings for support between parent and child or between husband and wife;
- (7) In all proceedings for pre-trial detention or waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-13 or 571-22;
- (8) In all proceedings under chapter 586, Domestic Abuse Protective Orders; and
- (9) For the protection of [~~dependent~~] vulnerable adults under chapter 346, part X.

In any case within paragraph (3), (4), or (6), the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E.”

SECTION 27. Section 626:1-505.5<sup>1</sup>, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Exceptions. There is no privilege under this rule:

- (1) Perjured testimony by victim. If the victim counselor reasonably believes that the victim has given perjured testimony and a party to the proceeding has made an offer of proof that perjury may have been committed.
- (2) Physical appearance and condition of victim. In matters of proof concerning the physical appearance and condition of the victim at the time of the alleged crime.
- (3) Breach of duty by victim counselor or victim counseling program. As to a communication relevant to an issue of breach of duty by the victim counselor or victim counseling program to the victim.
- (4) Mandatory reporting. To relieve victim counselors of any duty to refuse to report child abuse or neglect under chapter 350, domestic abuse under chapter 586, or abuse of a [~~dependent~~] vulnerable adult under part X of chapter 346, and to refuse to provide evidence in child abuse proceedings under chapter 587.
- (5) Proceedings for hospitalization. For communications relevant to an issue in proceedings to hospitalize the victim for mental illness or substance abuse, or in proceedings for the discharge or release of a victim previously hospitalized for mental illness or substance abuse.
- (6) Examination by order of court. If the court orders an examination of the physical, mental, or emotional condition of a victim, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose of which the examination is ordered unless the court orders otherwise.
- (7) Condition an element of claim or defense. As to a communication relevant to the physical, mental, or emotional condition of the victim in any proceeding in which the victim relies upon the condition as an element of the victim’s claim or defense or, after the victim’s death, in any proceeding in which any party relies upon the condition as an element of the party’s claim or defense.
- (8) Proceedings against the victim counselor. In any administrative or judicial proceeding in which the competency or practice of the victim counselor or of the victim counseling program is at issue, provided that

the identifying data of the victims whose records are admitted into evidence shall be kept confidential unless waived by the victim. The administrative agency, board or commission shall close to the public any portion of a proceeding, as necessary to protect the confidentiality of the victim.”

SECTION 28. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care [~~homes,~~] home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors

- in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
  - (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
  - (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
  - (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
  - (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
  - (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, ~~[dependent]~~ vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
  - (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
  - (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
  - (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
  - (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97; and
  - (24) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 29. The department of human services may work with interested stakeholders to develop a plan to build the capacity of community-based services to help with the provision of services under this Act.

SECTION 30. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.



SECTION 31. This Act shall take effect on July 1, 2009.  
(Approved June 9, 2008.)

Note

1. So in original.

ACT 155

H.B. NO. 2255

A Bill for an Act Relating to Life Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to amend Hawaii’s life insurance and annuity statutes to conform to model acts and regulations of the National Association of Insurance Commissioners relating to employee group life insurance policies and the replacement of life insurance policies and annuities.

SECTION 2. Section 431:10D-202, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Issuance of group life insurance policies shall be subject to the following requirements:

- (1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term employees shall include:
  - (A) The employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships, or partnerships, if the business of the employer and of such affiliated corporations, proprietorships, or partnerships is under common control;
  - (B) The individual proprietor or partners, if the employer is an individual proprietor or a partnership; and
  - (C) Retired employees.

No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless the individual is actively engaged in and devotes a substantial part of the individual’s time to the conduct of the business of the proprietorship or partnership;

- (2) The premium for the policy ~~shall be paid either:~~
  - (A) ~~Wholly from the employer’s fund or funds contributed by the employer; or~~
  - (B) ~~Partly from such funds and partly from funds contributed by the insured employees.~~

~~No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds provided in accordance with subparagraph (B) may be placed in force only if at least seventy-five per cent of the then eligible employees, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions.]~~ may be paid entirely by the employer, or by funds paid entirely by the insured employees, or by funds contributed by both the employer and the insured employees. Except as provided in paragraph (3), a policy on which no part of the premium is to be de-

- rived from funds contributed by the insured employees shall insure all eligible employees, except those who reject such coverage in writing;
- (3) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer;
- ~~[(4) The policy shall cover at least ten employees at date of issue;]~~ and
- ~~[(5)]~~ (4) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the ~~[employees,]~~ employ-er~~;~~ or trustees.”

SECTION 3. Section 431:10D-212, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except for a policy issued under sections 431:10D-203 and 431:10D-211, insurance under any group life insurance policy issued pursuant to this article may be extended to insure the employees or members of such groups against loss due to the death of their spouses and dependent children subject to the following:

- (1) The spouse and dependent of the individual insured may be covered in amounts of insurance equivalent to the amount of coverage of the insured individual~~], provided that in the case of a dependent other than a spouse of the insured individual the amount of insurance for the dependent shall not be in excess of fifty per cent of the coverage of the insured individual or \$5,000, whichever is less, and provided further that in the case of a dependent whose age at death is under six months, the amount shall not be in excess of \$2,000];~~
- (2) The premiums for the insurance of the spouse or dependent shall be paid either from funds contributed by the employer, union, association or other person to whom the policy has been issued, or from funds contributed by the individual insured, or from both; and
- (3) An insurer may exclude or limit the coverage on any spouse or dependent child as to whom evidence of individual insurability is not satisfactory to the insurer.”

SECTION 4. Section 431:10D-501, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Unless otherwise specifically included, this part shall not apply to transactions involving:

- (1) Credit life insurance;
- (2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals when initiated by an individual member of the group assisting with the selection of investment options offered by a single annuity provider in connection with enrolling the individuals. Group life insurance or group annuity certificates marketed through direct-response solicitation shall be subject to section 431:10D-507;
- (3) Group life insurance used to fund prearranged funeral contracts;
- (4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
- (5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

- (6) Policies or contracts used to fund:
  - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
  - (B) A plan described by sections 401(a), 401(k) or 403(b) of the Internal Revenue Code of 1986, as amended, where the plan, for purposes of ERISA, is established or maintained by an employer;
  - (C) A governmental or church plan defined in section 414 of the Internal Revenue Code of 1986, as amended, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code of 1986, as amended; or
  - (D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 

provided that, notwithstanding the exemptions listed in subparagraphs (A) to (D), this part shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee assisting with the selection of investment options offered by a single annuity provider in connection with enrolling that individual employee;
- (7) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
- (8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;
- (9) Immediate annuities that are purchased with proceeds from an existing contract; provided that immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this part; and
- (10) Structured settlements.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 9, 2008.)

**ACT 156**

H.B. NO. 2710

A Bill for an Act Relating to the Re-Employment of Retirees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§88- Re-employment of retirants.** (a) Appointing authorities in a county or the State may employ retired state or county government employees who are receiving retirement benefits under this chapter.

(b) The director of human resources of the appropriate state jurisdiction or the human resources management chief executive of a county may employ retired state or county government employees who are receiving retirement benefits under this chapter to fill labor shortage and difficult-to-fill exempt or civil service positions.

(c) Retired state or county government employees shall be eligible for a position of at least one-half of a full-time equivalent with a state or county government after one calendar year of retirement.

(d) Re-employment agreements shall not be entered into between the State or county and an employee prior to the retirement of the employee.

(e) Retired state or county government employees rehired for civil service positions under this section shall be recruited, selected, and employed pursuant to applicable civil service and employment laws.

(f) The director of human resources of the appropriate state jurisdiction in which a retired state or county government employee is hired or the human resources management chief executive of the respective county in which a retired state or county government employee is hired by that county shall certify the hiring of the retirant as having been performed pursuant to applicable civil service and employment laws.

(g) Sections 88-21, 88-42.5, 88-43, 88-45, 88-46, 88-98, 88-273, 88-326, and 88-344, chapter 89, and any other law to the contrary notwithstanding, retired state or county government employees who are hired by the State or any of the counties under this section shall not earn retirement service credit, contribute to the retirement system, or gain additional retirement system benefits as a result of their subsequent employment with the State or a county, and the retired state or county government employee shall continue to receive the retirant’s retirement benefits and health benefits without penalty. Each employer shall contribute to the pension accumulation fund the required percentage of the rehired employee’s compensation to amortize the system’s unfunded actuarial accrued liability.

(h) A retired state or county government employee who is hired by the State or county under this section shall join the appropriate bargaining unit if hired in a position covered by collective bargaining.

(i) This section shall not preclude a retired state or county government employee from returning to work and relinquishing the person’s retirement benefits to earn additional service credits and gain additional retirement benefits for a future retirement date as may be allowed by this chapter.

(j) The director of human resources of the appropriate state jurisdiction or the human resources management chief executive of a county shall submit an annual report to the legislature detailing the employment of retirants, including the number and positions of retired employees hired under this section no later than twenty days prior to the convening of each regular legislative session.

(k) For purposes of this section:

“Executive branch of the State” means all the departments of the executive branch of state government, except the University of Hawaii, the Hawaii health systems corporation, and the department of education.

“One calendar year” means twelve consecutive months from the date of the employee’s retirement to the date of the employee’s re-employment under this Act.

“State jurisdiction” means the department of education, the judiciary, the Hawaii health systems corporation, the office of Hawaiian affairs, the executive branch of the State or any of its political subdivisions, and the legislative branch of the State.”

SECTION 2. Act 286, Session Laws of Hawaii 2006, is amended by amending section 2 to read as follows:

“SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

“§302A- **Rehiring of retired teachers and administrators to fill certain positions; authorized.** (a) Beginning July 1, 2006, the department of education and charter schools may employ for positions up to one hundred per cent full-time equivalency:

- (1) Retired teachers to teach in teacher shortage areas identified by the department of education and charter schools and to serve as mentors for new classroom teachers; and
- (2) Retired administrators to teach or administer in teacher shortage areas identified by the department of education and charter schools and to serve as mentors for new classroom teachers,

with the prior approval of the superintendent of education or the local school board of each charter school and pursuant to collective bargaining agreements; provided that the department shall contribute [~~thirteen and three-quarters per cent~~] the required percentage of the rehired employee’s compensation to the pension accumulation fund[-] to amortize the employees’ retirement system’s unfunded actuarial accrued liability.

(b) Sections 88-21, 88-42.5, 88-43, 88-45, 88-46, 88-325, and 88-326, and any other law to the contrary notwithstanding, a teacher or administrator retired from the department of education or a charter school who is rehired under this section shall not earn retirement service credit, contribute to the retirement system, or gain additional retirement system benefits as a result of the teacher or administrator’s employment; provided that the retired teacher or administrator shall continue to be entitled to the teacher or administrator’s regular retirement benefits without penalty.

(c) To qualify for a position of at least one-half of a full-time [~~rehiring~~] equivalent under this section, the person shall have been retired for at least one calendar year prior to reemployment.”

SECTION 3. Act 286, Session Laws of Hawaii 2006, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 2006, and shall be repealed on June 30, [~~2011~~] 2013.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2008, and shall be repealed on June 30, 2013.

(Approved June 9, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Contempt of Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 571-81, Hawaii Revised Statutes, is amended to read as follows:

**“§571-81 Contempt of court.** (a) Any adult who wilfully violates, neglects, or refuses to obey or perform any lawful order of the court may be proceeded against for contempt of court. Any adult found in contempt of court may be punished as provided by law.

(b) When a court of competent jurisdiction issues an order compelling a parent to furnish support, including child support, medical support, or other remedial care, for the parent’s child, it shall constitute prima facie evidence of a civil contempt of court upon proof that:

- (1) The order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced; and
- (2) The parent did not comply with the order.

An order of civil contempt of court based on prima facie evidence under this subsection shall clearly state that the failure to comply with the order of civil contempt of court may subject the parent to a penalty that may include imprisonment or, if imprisonment is immediately ordered, the conditions that must be met for release from imprisonment. A party may also prove civil contempt of court by means other than prima facie evidence under this subsection.”

SECTION 2. Section 584-17, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Wilful failure to obey the judgment or order of the court shall be a civil contempt of the court. All remedies for the enforcement of judgments shall apply to this chapter. When a court of competent jurisdiction issues an order compelling a parent to furnish support, including child support, medical support, or other remedial care, for the parent’s child, it shall constitute prima facie evidence of a civil contempt of court upon proof that:

- (1) The order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced; and
- (2) The parent did not comply with the order.

An order of civil contempt of court based on prima facie evidence under this subsection shall clearly state that the failure to comply with the order of civil contempt of court may subject to<sup>1</sup> the parent to a penalty that may include imprisonment or, if imprisonment is immediately ordered, the conditions that must be met for release from imprisonment. A party may also prove civil contempt of court by means other than prima facie evidence under this subsection.”

SECTION 3. Section 710-1077, Hawaii Revised Statutes, is amended by amending subsection (6) to read as follows:

“(6) Nothing in this section shall be construed to alter the court’s power to punish civil contempt. When the contempt consists of the refusal to perform an act which the contemnor has the power to perform, the contemnor may be imprisoned until the contemnor has performed it. In such a case the act shall be specified in the warrant of commitment. In any proceeding for review of the judgment or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment or order the commitment. When a court of competent jurisdiction issues an order compelling a parent to furnish support, including child support, medical support, or other remedial care, for the parent’s child, it shall constitute prima facie evidence of a civil contempt of court upon proof that:

- (1) The order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced; and
- (2) The parent did not comply with the order.

An order of civil contempt of court based on prima facie evidence under this subsection shall clearly state that the failure to comply with the order of civil contempt of court may subject the parent to a penalty that may include imprisonment or, if im-

prisonment is immediately ordered, the conditions that must be met for release from imprisonment. A party may also prove civil contempt of court by means other than prima facie evidence under this subsection.”

SECTION 4. This Act does not affect rights and duties that matured and penalties that were incurred in civil contempt proceedings that were begun, before its effective date.

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect January 1, 2009.

(Approved June 9, 2008.)

**Note**

- 1. So in original.

**ACT 158**

H.B. NO. 2500

A Bill for an Act Relating to the State Budget.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act shall be known and may be cited as the Supplemental Appropriations Act of 2008.

SECTION 2. This Act amends Act 213, Session Laws of Hawaii 2007, and other appropriations and authorizations effective during fiscal biennium 2007-2009.

SECTION 3. Part II, Act 213, Session Laws of Hawaii 2007, is amended by amending section 3 to read as follows:

“SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 2007 and ending June 30, 2009. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each fiscal year, except as provided elsewhere in this Act, or as provided by general law.

**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
<b>A. ECONOMIC DEVELOPMENT</b>					
1.	BED100	STRATEGIC MARKETING & SUPPORT			
	OPERATING		BED	20.00*	20.00*
			BED	2,178,042 A	1,828,212 A
			BED	250,000 N	250,000 N
			BED	1,821,915 W	1,821,915 W
2.	BED105	CREATIVE INDUSTRIES DIVISION			
	OPERATING		BED	11.00*	13.00*
			BED	1,358,067 A	1,293,170 A
3.	BED107	FOREIGN TRADE ZONE			
	OPERATING		BED	19.00*	19.00*
			BED	2,010,341 B	2,010,341 B

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
4.		BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT			
				35.00*	35.00*
		OPERATING	BED	2,605,748 A	1,648,994 A
		INVESTMENT CAPITAL	BED	1,300,000 C	C
5.		BED113 - TOURISM			
		OPERATING	BED	25,000 A	<sup>1</sup>
				2.00*	2.00*
			BED	138,663,979 B	140,063,979 B
6.		AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE			
		OPERATING	AGR	10.00*	10.00*
			AGR	1,105,036 B	1,105,036 B
			AGR	5,000,000 W	5,000,000 W
7.		LNR172 - FORESTRY RESOURCE MANAGEMENT AND DEVELOPMENT			
		OPERATING	LNR	19.00*	19.00*
			LNR	813,603 A	813,730 A
			LNR	1.50*	1.50*
			LNR	5,784,970 B	4,069,970 B
			LNR	1.50*	1.50*
			LNR	390,276 N	390,276 N
8.		AGR122 - PLANT, PEST, AND DISEASE CONTROL			
		OPERATING	AGR	138.00*	138.00*
			AGR	7,822,273 A	7,212,611 A
			AGR	B	565,464 B
			AGR	810,183 N	810,183 N
			AGR	512,962 T	512,962 T
			AGR	9.00*	9.00*
			AGR	1,924,816 U	1,424,816 U
			AGR	58,360 W	58,360 W
		INVESTMENT CAPITAL	AGR	C	5,000,000 C
			AGR	N	5,000,000 N
9.		AGR131 - RABIES QUARANTINE			
		OPERATING	AGR	100,000 A	100,000 A
				32.00*	32.00*
			AGR	2,952,834 B	2,952,834 B
10.		AGR132 - ANIMAL DISEASE CONTROL			
		OPERATING	AGR	24.00*	24.00*
			AGR	1,341,937 A	1,341,937 A
			AGR	456,730 N	442,230 N
			AGR	420,858 U	420,858 U
11.		AGR151 - QUALITY AND PRICE ASSURANCE			
		OPERATING	AGR	24.00*	24.00*
			AGR	1,331,736 A	1,284,288 A
				2.00*	2.00*
			AGR	290,119 B	290,119 B
			AGR	52,424 N	52,424 N
			AGR	300,000 T	300,000 T
			AGR	501,638 W	501,638 W
12.		AGR171 - AGRICULTURAL DEVELOPMENT AND MARKETING			
		OPERATING	AGR	18.00*	18.00*
			AGR	2,379,553 A	1,879,553 A
			AGR	B	20,000 B
			AGR	75,000 N	184,500 N



PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
13.	AGR141 -	AGRICULTURAL RESOURCE MANAGEMENT			
	OPERATING		AGR	2.00 * 573,157 A	2.00 * 573,157 A
			AGR	6.00 * 3,717,780 B	8.00 * 853,942 B
	INVESTMENT CAPITAL		AGR	13.00 * 1,417,472 W	13.00 * 1,417,472 W
			AGR	18,400,000 C	1,500,000 C
			AGR	1,500,000 N	1,500,000 N
14.	AGR161 -	AGRIBUSINESS DEVELOPMENT AND RESEARCH			
	OPERATING		AGR	140,558 A	140,558 A
			AGR	3,360,761 W	3,360,761 W
	INVESTMENT CAPITAL		AGR	C	13,057,000 C
			AGR	N	106,000 N
15.	AGR192 -	GENERAL ADMINISTRATION FOR AGRICULTURE			
	OPERATING		AGR	29.00 * 2,392,440 A	29.00 * 1,763,063 A
	INVESTMENT CAPITAL		AGR	625,000 C	700,000 C <sup>2</sup>
16.	LNR153 -	COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT			
	OPERATING		LNR	11.00 * 880,926 A	10.00 * 811,134 A
			LNR	300,315 B	317,270 B
			LNR	667,844 N	747,844 N
	INVESTMENT CAPITAL		LNR	30,000 C	230,000 C
17.	AGR153 -	AQUACULTURE DEVELOPMENT PROGRAM			
	OPERATING		AGR	8.00 * 610,192 A	8.00 * 610,192 A
			AGR	30,000 B	30,000 B
			AGR	87,115 N	87,115 N
18.	BED120 -	STRATEGIC INDUSTRIES			
	OPERATING		BED	9.00 * 1,143,447 A	9.00 * 1,273,579 A
			BED	4,263,395 N	4,263,397 N
			BED	U	100,000 U
19.	BED143 -	HIGH TECHNOLOGY DEVELOPMENT CORPORATION			
	OPERATING		BED	1.50 * 968,401 A	1.50 * 1,068,465 A
			BED	1.50 * 3,827,732 B	1.50 * 3,827,732 B
			BED	3,548,750 N	3,548,750 N
			BED	1,500,000 W	1,500,000 W
20.	BED145 -	HAWAII STRATEGIC DEVELOPMENT CORPORATION			
	OPERATING		BED	4,742,500 B	8,700,000 B
			BED	4,272,728 W	4,272,728 W
21.	BED146 -	NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY			
	OPERATING		BED	365,000 A	365,000 A
			BED	5,387,491 B	5,394,341 B
			BED	6,883,293 N	6,883,294 N
	INVESTMENT CAPITAL		BED	5,250,000 C	990,000 C
22.	LNR141 -	WATER AND LAND DEVELOPMENT			
	OPERATING		LNR	3.00 * 373,755 A	3.00 * 299,789 A

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
				2.00*	3.00*
			LNR	402,560 B	434,000 B
			LNR	119,104 W	119,104 W
		INVESTMENT CAPITAL	LNR	C	1,770,000 C
			LNR	1,500,000 S	S
			LNR	2,905,000 U	11,500,000 U
23.		BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY		2.00*	2.00*
		OPERATING	BED	310,664 A	310,710 A
			BED	650,000 W	650,000 W
		INVESTMENT CAPITAL	BED	2,500,000 C	2,670,000 C
24.		BED151 - ALOHA TOWER DEVELOPMENT CORPORATION			
		OPERATING	BED	1,530,554 B	1,530,554 B
			BED	U	1,500,000 U
25.		BED160 - HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION		3.00*	3.00*
		OPERATING	BED	15,800,983 A	184,401 A
			BED	3,000,000 N	3,000,000 N
			BED	36,923,698 T	31,923,698 T
			BED	31.00*	31.00*
		INVESTMENT CAPITAL	BED	5,905,203 W	6,371,155 W
			BED	125,000 C	51,000,000 C
			BED	2,500,000 W	W

## B. EMPLOYMENT

1.		LBR111 - WORKFORCE DEVELOPMENT PROGRAM		4.30*	4.30*
		OPERATING	LBR	309,181 A	250,933 A
			LBR	6,806,016 B	6,806,016 B
			LBR	119.20*	119.20*
			LBR	49,651,572 N	49,651,572 N
			LBR	3,610,213 U	3,610,213 U
2.		LBR135 - WORKFORCE DEVELOPMENT COUNCIL		3.00*	3.00*
		OPERATING	LBR	188,357 A	188,357 A
			LBR	447,409 N	447,409 N
3.		LBR171 - UNEMPLOYMENT INSURANCE PROGRAM			
		OPERATING	LBR	166,626,650 B	166,626,650 B
			LBR	207.50*	207.50*
			LBR	14,799,675 N	14,799,675 N
4.		LBR903 - OFFICE OF COMMUNITY SERVICES		4.00*	4.00*
		OPERATING	LBR	5,336,564 A	3,596,913 A
			LBR	2.00*	2.00*
			LBR	5,856,479 N	5,856,479 N
			LBR	U	1,200,000 U
		INVESTMENT CAPITAL	LBR	4,786,000 C	2,950,000 C
5.		LBR905 - HI CAREER (KOKUA) INFORMATION DELIVERY SYS			
		OPERATING	LBR	430,998 A	430,998 A
			LBR	160,050 N	160,050 N
6.		HMS802 - VOCATIONAL REHABILITATION		27.13*	27.13*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
	OPERATING		HMS	4,084,904 A 95.37 *	4,085,181 A 95.37 *
			HMS	12,949,367 N	13,775,679 N
			HMS	1,330,200 W	1,330,200 W
	INVESTMENT CAPITAL		HMS	250,000 C	C
7.	LBR143 - HAWAII OCCUPATIONAL SAFETY AND HEALTH PROGRAM				
	OPERATING		LBR	41.50 * 2,092,635 A 25.50 *	41.50 * 2,112,363 A 25.50 *
			LBR	2,244,249 N	2,244,249 N
			LBR	50,000 W	50,000 W
8.	LBR152 - WAGE STANDARD <sup>3</sup> PROGRAM				
	OPERATING		LBR	24.50 * 1,256,489 A	24.00 * 1,256,489 A
			LBR	53,131 U	U
9.	LBR153 - HAWAII CIVIL RIGHTS COMMISSION				
	OPERATING		LBR	24.50 * 1,355,403 A 5.50 *	24.50 * 1,355,403 A 5.50 *
			LBR	589,964 N	589,964 N
10.	LBR183 - DISABILITY COMPENSATION PROGRAM				
	OPERATING		LBR	109.00 * 5,479,284 A 8.00 *	109.00 * 5,237,412 A 8.00 *
			LBR	23,675,713 B	23,675,713 B
11.	LBR316 - OFFICE OF LANGUAGE ACCESS				
	OPERATING		LBR	6.00 * 367,059 A	6.00 * 440,000 A
12.	LBR161 - HAWAII LABOR RELATIONS BOARD				
	OPERATING		LBR	1.00 * 466,419 A	1.00 * 466,419 A
13.	LBR812 - LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD				
	OPERATING		LBR	12.00 * 762,566 A	12.00 * 827,566 A
14.	LBR871 - EMPLOYMENT SECURITY APPEALS REFEREES' OFFICE				
	OPERATING		LBR	10.80 * 904,402 N	10.80 * 904,402 N
15.	LBR901 - DATA GATHERING, RESEARCH, AND ANALYSIS				
	OPERATING		LBR	8.88 * 468,466 A 28.12 *	8.88 * 468,466 A 28.12 *
			LBR	2,438,236 N	2,438,236 N
16.	LBR902 - GENERAL ADMINISTRATION				
	OPERATING		LBR	27.46 * 1,368,088 A 35.48 *	27.46 * 598,850 A 35.48 *
			LBR	3,115,751 N	3,095,547 N

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
<b>C. TRANSPORTATION FACILITIES</b>					
1.	TRN102	- HONOLULU INTERNATIONAL AIRPORT			
	OPERATING		TRN	592.50 *	593.50 *
			TRN	105,044,653 B	102,700,542 B
	INVESTMENT CAPITAL		TRN	5,625,000 N	3,337,500 N
			TRN	18,760,000 B	B
			TRN	142,633,000 E	213,296,000 E
			TRN	9,000,000 N	4,500,000 N
2.	TRN104	- GENERAL AVIATION			
	OPERATING		TRN	30.00 *	30.00 *
			TRN	6,760,575 B	6,691,575 B
	INVESTMENT CAPITAL		TRN	650,000 B	B
			TRN	5,805,000 N	N
3.	TRN111	- HILO INTERNATIONAL AIRPORT			
	OPERATING		TRN	82.00 *	82.00 *
			TRN	12,802,246 B	12,585,482 B
			TRN	2,945,000 N	1,567,500 N
	INVESTMENT CAPITAL		TRN	20,850,000 B	3,640,000 B
			TRN	E	550,000 E
			TRN	N	4,950,000 N
4.	TRN114	- KONA INTERNATIONAL AIRPORT AT KEAHOLE			
	OPERATING		TRN	83.00 *	83.00 *
			TRN	12,919,387 B	12,869,720 B
			TRN	4,441,250 N	1,520,000 N
	INVESTMENT CAPITAL		TRN	8,611,000 B	B
			TRN	6,460,000 E	3,000,000 E
5.	TRN116	- WAIMEA-KOHALA AIRPORT			
	OPERATING		TRN	9.00 *	9.00 *
			TRN	817,572 B	844,605 B
			TRN	1,000 N	428,500 N
6.	TRN118	- UPOLO AIRPORT			
	OPERATING		TRN	149,500 B	149,500 B
7.	TRN131	- KAHULUI AIRPORT			
	OPERATING		TRN	151.00 *	151.00 *
			TRN	21,408,721 B	20,777,676 B
			TRN	1,125,000 N	450,000 N
	INVESTMENT CAPITAL		TRN	26,820,000 B	6,460,000 B
			TRN	9,020,000 E	35,984,000 E
			TRN	949,000 N	2,415,000 N
8.	TRN133	- HANA AIRPORT			
	OPERATING		TRN	9.00 *	9.00 *
			TRN	871,165 B	792,698 B
9.	TRN135	- KAPALUA AIRPORT			
	OPERATING		TRN	11.00 *	11.00 *
			TRN	1,774,230 B	1,922,297 B
10.	TRN141	- MOLOKAI AIRPORT			
	OPERATING		TRN	13.50 *	13.50 *
			TRN	2,455,601 B	2,124,152 B
			TRN	475,000 N	475,000 N
	INVESTMENT CAPITAL		TRN	700,000 B	B
			TRN	6,210,000 N	N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
11.	TRN143 - KALAUPAPA AIRPORT				
	OPERATING		TRN	9.00* 1,230,818B	9.00* 656,477B
12.	TRN151 - LANAI AIRPORT				
	OPERATING		TRN	10.00* 1,647,124B	10.00* 1,878,619B
	INVESTMENT CAPITAL		TRN	855,000N	
			TRN	10,000B	B
			TRN	3,344,000N	N
			TRN	176,000R	R
13.	TRN161 - LIHUE AIRPORT				
	OPERATING		TRN	101.00* 18,932,554B	101.00* 18,720,195B
	INVESTMENT CAPITAL		TRN	1,500,000N	1,500,000N
			TRN	4	3,185,000B
			TRN	E	7,772,000E
			TRN	N	1,371,000N
14.	TRN163 - PORT ALLEN AIRPORT				
	OPERATING		TRN	26,841 B	26,841 B
15.	TRN195 - AIRPORTS ADMINISTRATION				
	OPERATING		TRN	113.00* 114,222,813B	114.00* 125,301,219B
	INVESTMENT CAPITAL		TRN	31,337,000B	8,250,000B
			TRN	E	8,804,000E
			TRN	N	2,592,000N
			TRN	100,000X	100,000X
16.	TRN301 - HONOLULU HARBOR				
	OPERATING		TRN	120.00* 21,703,815B	120.00* 21,724,690B
	INVESTMENT CAPITAL		TRN	2,500,000B	4,850,000B
			TRN	E	29,900,000E
			TRN	5,400,000R	R
17.	TRN303 - KALAELOA BARBERS POINT HARBOR				
	OPERATING		TRN	3.00* 1,170,786B	3.00* 1,279,013B
	INVESTMENT CAPITAL		TRN	E	6,600,000E
18.	TRN305 - KEWALO BASIN				
	OPERATING		TRN	831,738B	831,738B
	INVESTMENT CAPITAL		TRN	4,530,000B	B
19.	TRN311 - HILO HARBOR				
	OPERATING		TRN	14.00* 2,484,037B	14.00* 2,460,907B
	INVESTMENT CAPITAL		TRN	700,000B	B
			TRN	E	13,440,000E
20.	TRN313 - KAWAIHAE HARBOR				
	OPERATING		TRN	2.00* 1,446,064B	2.00* 1,576,247B
	INVESTMENT CAPITAL		TRN	6,500,000B	B
			TRN	E	35,500,000E
			TRN	2,000N	N

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
21.	TRN331 - KAHULUI HARBOR			18.00 *	18.00 *
	OPERATING	TRN		3,387,744B	3,489,604B
	INVESTMENT CAPITAL	TRN			725,579N
		TRN		4,975,000B	500,000B
		TRN			34,500,000E
22.	TRN341 - KAUNAKAKAI HARBOR			1.00 *	1.00 *
	OPERATING	TRN		486,419B	486,419B
23.	TRN361 - NAWILIWILI HARBOR			15.00 *	15.00 *
	OPERATING	TRN		2,661,438B	2,629,581B
	INVESTMENT CAPITAL	TRN		202,000B	B
		TRN			300,000E
24.	TRN363 - PORT ALLEN HARBOR			1.00 *	1.00 *
	OPERATING	TRN		512,293B	517,293B
	INVESTMENT CAPITAL	TRN		500,000B	B
25.	TRN351 - KAUMALAPAU HARBOR				
	OPERATING	TRN		238,000B	238,000B
26.	TRN395 - HARBORS ADMINISTRATION			59.00 *	72.00 *
	OPERATING	TRN		40,777,054B	48,526,594B
	INVESTMENT CAPITAL	TRN		5,658,000B	7,000,000B
		TRN			4,135,000E
		TRN			1,000N
27.	TRN501 - OAHU HIGHWAYS			228.00 *	228.00 *
	OPERATING	TRN		61,945,421B	80,844,748B
		TRN		2,200,000N	2,200,000N
	INVESTMENT CAPITAL	TRN		250,000B	5,650,000B
		TRN		1,200,000C	C
		TRN		28,390,000E	15,939,000E
		TRN		59,961,000N	18,562,000N
		TRN		9,999,000R	R
		TRN		700,000X	X
		TRN		17,225,000U	U
28.	TRN511 - HAWAII HIGHWAYS			124.00 *	124.00 *
	OPERATING	TRN		24,490,830B	22,960,942B
	INVESTMENT CAPITAL	TRN		400,000B	B
		TRN		11,870,000E	4,299,000E
		TRN		43,280,000N	10,801,000N
		TRN		275,000X	X
29.	TRN531 - MAUI HIGHWAYS			65.00 *	65.00 *
	OPERATING	TRN		18,396,271B	19,251,543B
	INVESTMENT CAPITAL	TRN		3,140,000E	11,540,000E
		TRN		9,560,000N	41,300,000N
30.	TRN541 - MOLOKAI HIGHWAYS			12.00 *	12.00 *

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		OPERATING	TRN	3,523,206 B	4,137,940 B
		INVESTMENT CAPITAL	TRN	2,900,000 E	E
			TRN	2,800,000 N	N
31.	TRN551	LANAI HIGHWAYS			
		OPERATING	TRN	4.00 * 842,565 B	4.00 * 868,087 B
32.	TRN561	KAUAI HIGHWAYS			
		OPERATING	TRN	51.00 * 13,135,766 B	51.00 * 14,214,142 B
		INVESTMENT CAPITAL	TRN	6,700,000 E	9,900,000 E
			TRN	7,200,000 N	13,600,000 N
33.	TRN595	HIGHWAYS ADMINISTRATION			
		OPERATING	TRN	80.00 * 76,115,141 B	80.00 * 88,562,587 B
			TRN	3,655,940 N	4,417,330 N
		INVESTMENT CAPITAL	TRN	18,575,000 B	18,000,000 B
			TRN	6,824,000 E	6,974,000 E
			TRN	12,902,000 N	26,501,000 N
34.	TRN597	HIGHWAY SAFETY			
		OPERATING	TRN	31.00 * 5,978,053 B	31.00 * 5,978,053 B
			TRN	9.00 * 5,670,816 N	9.00 * 5,670,816 N
35.	TRN995	GENERAL ADMINISTRATION			
		OPERATING	TRN	103.00 * 14,490,186 B	104.00 * 13,870,890 B
			TRN	15,519,060 N	15,519,060 N
			TRN	140,969 R	140,969 R

D. ENVIRONMENTAL PROTECTION

1.	HTH840	ENVIRONMENTAL MANAGEMENT			
		OPERATING	HTH	57.00 * 3,509,085 A	57.00 * 3,456,360 A
			HTH	60.20 * 79,786,211 B	60.00 * 79,816,308 B
			HTH	47.40 * 8,716,169 N	46.80 * 8,763,269 N
			HTH	53.40 * 164,560,185 W	54.20 * 164,585,457 W
		INVESTMENT CAPITAL	HTH	2,666,000 C	3,326,000 C
			HTH	13,327,000 N	16,626,000 N
2.	AGR846	PESTICIDES			
		OPERATING	AGR	18.00 * 930,478 A	18.00 * 891,526 A
			AGR	1.00 * 425,824 N	1.00 * 425,824 N
			AGR	4.00 * 765,470 W	4.00 * 765,470 W
3.	LNR401	AQUATIC RESOURCES			
		OPERATING	LNR	27.00 * 2,555,544 A	28.00 * 2,999,622 A
				1.00 *	1.00 *

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
			LNR	2,436,559 N	3,447,909 N
4.	LNR402 -	NATIVE RESOURCES AND FIRE PROTECTION PROGRAM		56.50 *	57.50 *
	OPERATING		LNR	6,027,826 A	5,556,310 A
			LNR	3,405,193 B	3,405,193 B
				6.00 *	6.00 *
	INVESTMENT CAPITAL		LNR	5,119,080 N	5,119,081 N
			LNR	500,000 C	1,250,000 C
5.	LNR404 -	WATER RESOURCES		21.00 *	21.00 *
	OPERATING		LNR	2,412,434 A	2,412,670 A
				3.00 *	3.00 *
			LNR	405,730 B	405,730 B
6.	LNR405 -	CONSERVATION AND RESOURCES ENFORCEMENT		125.25 *	143.25 *
	OPERATING		LNR	8,243,905 A	8,524,291 A
				23.00 *	18.00 *
			LNR	1,630,890 B	1,566,567 B
				2.75 *	2.75 *
			LNR	662,088 N	662,088 N
				1.00 *	1.00 *
	INVESTMENT CAPITAL		LNR	63,831 W	63,831 W
			LNR	C	100,000 C
7.	LNR407 -	NATURAL AREA RESERVES AND WATERSHED MANAGEMENT		22.00 *	22.00 *
	OPERATING		LNR	1,196,795 A	1,196,931 A
				1.00 *	1.00 *
			LNR	8,611,868 B	10,111,868 B
			LNR	5	200,000 N
	INVESTMENT CAPITAL		LNR	B	100,000 B
8.	HTH850 -	OFFICE OF ENVIRONMENTAL QUALITY CONTROL		5.00 *	5.00 *
	OPERATING		HTH	319,926 A	319,926 A
9.	LNR906 -	LNR - NATURAL AND PHYSICAL ENVIRONMENT		33.00 *	33.00 *
	OPERATING		LNR	1,859,396 A	1,524,201 A
				6.00 *	6.00 *
	INVESTMENT CAPITAL		LNR	656,508 B	654,008 B
			LNR	5,230,000 C	4,988,000 C
10.	HTH849 -	ENVIRONMENTAL HEALTH ADMINISTRATION		15.00 *	15.00 *
	OPERATING		HTH	969,932 A	969,932 A
				.50 *	.50 *
			HTH	49,875 B	49,875 B
				14.50 *	14.50 *
			HTH	3,037,634 N	3,201,314 N
				14.00 *	14.00 *
			HTH	3,262,663 W	3,362,663 W

E. HEALTH

1.	HTH100 -	COMMUNICABLE DISEASE SERVICES		119.00 *	118.00 *
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PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		OPERATING	HTH	14,085,162 A	14,141,483 A
				16.50 *	16.50 *
		INVESTMENT CAPITAL	HTH	7,923,827 N	7,923,827 N
			AGS	1,510,000 C	C
2.		HTH131 - DISEASE OUTBREAK CONTROL			
		OPERATING	HTH	20.60 *	20.60 *
				1,663,977 A	1,663,977 A
				34.40 *	34.40 *
			HTH	12,749,641 N	12,819,280 N
3.		HTH141 - DENTAL DISEASES			
		OPERATING	HTH	25.00 *	25.00 *
				1,743,384 A	1,743,384 A
4.		HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM			
		OPERATING	HTH	16.00 *	16.00 *
			HTH	60,275,468 A	62,365,421 A
			HTH	6,498,658 B	13,283,155 B
				3.00 *	3.00 *
			HTH	1,268,522 N	1,268,522 N
5.		HTH501 - DEVELOPMENTAL DISABILITIES			
		OPERATING	HTH	236.75 *	236.75 *
				66,576,526 A	71,625,299 A
				3.00 *	3.00 *
			HTH	1,025,331 B	1,025,331 B
			HTH	60,118,132 U	64,264,776 U
6.		HTH560 - FAMILY HEALTH			
		OPERATING	HTH	171.75 *	178.75 *
				45,263,183 A	45,109,259 A
				7.00 *	9.00 *
			HTH	7,110,659 B	7,376,539 B
				183.50 *	182.50 *
			HTH	41,946,810 N	42,099,682 N
				1.00 *	1.00 *
			HTH	1,543,739 U	3,143,739 U
		INVESTMENT CAPITAL	HTH	C	400,000 C
7.		HTH580 - COMMUNITY HEALTH SERVICES			
		OPERATING	HTH	221.00 *	221.00 *
			HTH	13,672,308 A	13,547,308 A
				110,720 B	110,720 B
				11.00 *	11.00 *
			HTH	3,821,823 N	3,821,823 N
			HTH	1,395,037 U	1,545,037 U
		INVESTMENT CAPITAL	HTH	C	250,000 C
8.		HTH590 - TOBACCO SETTLEMENT			
		OPERATING	HTH	26.00 *	26.00 *
			HTH	53,847,266 B	53,847,266 B
				3,400,000 U	4,700,000 U
9.		HTH595 - HEALTH RESOURCES ADMINISTRATION			
		OPERATING	HTH	2.00 *	2.00 *
				768,296 A	536,416 A
		INVESTMENT CAPITAL	HTH	7,025,000 C	250,000 C
10.		HTH210 - HAWAII HEALTH SYSTEMS CORPORATION			
		OPERATING	HTH	53,612,232 A	53,622,961 A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
				2,836.25 *	2,836.25 *
			HTH	379,654,000 B	403,460,000 B
		INVESTMENT CAPITAL	HTH	23,920,000 C	3,332,000 C
11.	HTH211 -	KAHUKU HOSPITAL OPERATING	HTH	1,500,000 A	1,500,000 A
13. <sup>6</sup>	HTH420 -	ADULT MENTAL HEALTH - OUTPATIENT OPERATING	HTH	198.50 *	198.50 *
			HTH	73,268,683 A	82,539,423 A
			HTH	22,382,981 B	24,832,981 B
			HTH	1,643,030 N	1,643,030 N
14.	HTH430 -	ADULT MENTAL HEALTH - INPATIENT OPERATING	HTH	613.50 *	639.00 *
		INVESTMENT CAPITAL	AGS	53,743,264 A	54,259,345 A
			HTH	3,000,000 C	3,000,000 C
			HTH	125,000 C	200,000 C
15.	HTH440 -	ALCOHOL AND DRUG ABUSE OPERATING	HTH	22.00 *	22.00 *
			HTH	19,286,849 A	20,110,201 A
			HTH	300,000 B	300,000 B
			HTH	6.00 *	6.00 *
		INVESTMENT CAPITAL	HTH	10,859,867 N	13,609,867 N
			HTH	675,000 C	C
16.	HTH460 -	CHILD AND ADOLESCENT MENTAL HEALTH OPERATING	HTH	193.50 *	193.50 *
			HTH	44,103,749 A	45,063,201 A
			HTH	17.00 *	17.00 *
			HTH	19,636,965 B	18,636,965 B
			HTH	2,555,977 N	2,568,019 N
			HTH	2,260,313 U	2,260,313 U
17.	HTH495 -	BEHAVIORAL HEALTH ADMINISTRATION OPERATING	HTH	66.50 *	66.50 *
			HTH	7,887,389 A	5,239,880 A
			HTH	3,694,999 N	3,694,999 N
18.	HTH610 -	ENVIRONMENTAL HEALTH SERVICES OPERATING	HTH	139.00 *	139.00 *
			HTH	7,305,280 A	7,222,501 A
			HTH	8.00 *	8.00 *
			HTH	991,853 B	991,853 B
			HTH	6.00 *	6.00 *
			HTH	594,682 N	594,682 N
			HTH	2.00 *	2.00 *
			HTH	98,434 U	98,434 U
19.	HTH710 -	STATE LABORATORY SERVICES OPERATING	HTH	86.00 *	86.00 *
			HTH	7,400,591 A	7,164,453 A
			HTH	N	483,333 N
20.	HTH720 -	HEALTH CARE ASSURANCE OPERATING	HTH	21.70 *	21.70 *
			HTH	1,561,290 A	1,554,805 A
			HTH	406,000 B	406,000 B
			HTH	18.10 *	18.10 *
			HTH	1,583,243 N	1,632,224 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
			HTH	903,403 U	860,189 U
21.	HTH906	STATE HEALTH PLANNING AND DEVELOPMENT AGENCY			
	OPERATING		HTH	8.00*	8.00*
			HTH	777,118 A	677,118 A
			HTH	578,000 B	114,000 B
22.	HTH760	HEALTH STATUS MONITORING			
	OPERATING		HTH	26.00*	34.00*
			HTH	1,602,768 A	1,574,291 A
			HTH	589,108 B	400,037 B
			HTH	3.00*	6.00*
			HTH	397,214 N	397,214 N
23.	HTH905	DEVELOPMENTAL DISABILITIES COUNCIL			
	OPERATING		HTH	1.50*	1.50*
			HTH	182,835 A	209,851 A
			HTH	6.50*	6.50*
			HTH	462,315 N	462,315 N
24.	HTH907	GENERAL ADMINISTRATION			
	OPERATING		HTH	122.50*	123.50*
			HTH	8,039,987 A	5,956,851 A
			HTH	1,304,909 N	1,304,909 N
	INVESTMENT CAPITAL		AGS	9,493,000 C	5,904,000 C
			HTH	700,000 C	C
<b>F. SOCIAL SERVICES</b>					
1.	HMS301	CHILD PROTECTIVE SERVICES			
	OPERATING		HMS	294.69*	295.44*
			HMS	26,578,341 A	26,207,660 A
			HMS	450,000 B	610,000 B
			HMS	249.81*	250.06*
			HMS	37,159,217 N	38,456,774 N
2.	HMS302	GENERAL SUPPORT FOR CHILD CARE			
	OPERATING		HMS	26.07*	26.07*
			HMS	1,245,650 A	1,245,908 A
			HMS	15.93*	16.93*
			HMS	6,512,325 N	6,683,439 N
3.	HMS303	CHILD PROTECTIVE SERVICES PAYMENTS			
	OPERATING		HMS	44,816,013 A	41,816,013 A
			HMS	20,095,666 N	20,095,666 N
4.	HMS305	CASH SUPPORT FOR CHILD CARE			
	OPERATING		HMS	22,411,811 A	22,411,811 A
			HMS	34,250,754 N	34,250,754 N
5.	HMS501	IN-COMMUNITY YOUTH PROGRAMS			
	OPERATING		HMS	21.00*	24.00*
			HMS	7,765,437 A	7,354,444 A
			HMS	5,170,848 N	5,170,848 N
	INVESTMENT CAPITAL		HMS	614,000 C	C
6.	HMS503	HAWAII YOUTH CORRECTIONAL FACILITY (HYCF)			
	OPERATING		HMS	118.50*	125.00*
			HMS	10,460,677 A	10,233,903 A
			HMS	.50*	*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		INVESTMENT CAPITAL	HMS	16,540 U	232 U
			HMS	800,000 C	C
7.	DEF112 -	SERVICES TO VETERANS		28.00 *	19.00 *
		OPERATING	DEF	1,966,063 A	1,524,292 A
		INVESTMENT CAPITAL	AGS	300,000 C	C
			DEF	1,950,000 C	1,250,000 C
8.	HMS601 -	ADULT AND COMMUNITY CARE SERVICES		99.58 *	99.58 *
		OPERATING	HMS	11,027,642 A	10,876,668 A
				17.92 *	17.92 *
			HMS	5,577,856 N	5,710,746 N
			HMS	10,000 R	10,000 R
		INVESTMENT CAPITAL	HMS	280,106 U	280,106 U
			HMS	2,448,000 C	C
9.	HMS206 -	FEDERAL ASSISTANCE PAYMENTS			
		OPERATING	HMS	2,035,806 N	2,035,806 N
10.	HMS211 -	CASH SUPPORT FOR FAMILIES - SELF-SUFFICIENCY			
		OPERATING	HMS	38,182,284 A	38,182,284 A
			HMS	41,000,000 N	41,000,000 N
11.	HMS212 -	CASH SUPPORT FOR AGED, BLIND, DISABLED INDIV			
		OPERATING	HMS	31,055,304 A	31,055,304 A
12.	HMS220 -	RENTAL HOUSING SERVICES			
		OPERATING	HMS	10,194,240 A	5,039,240 A
				200.00 *	200.00 *
			HMS	43,869,465 N	43,869,475 N
				23.00 *	23.00 *
		INVESTMENT CAPITAL	HMS	3,992,323 W	3,992,323 W
			HMS	25,000,000 C	16,410,000 C
13.	HMS807 -	TEACHER HOUSING			
		OPERATING	HMS	322,625 W	W
14.	HMS229 -	HPHA ADMINISTRATION			
		OPERATING	HMS	10,870,778 N	10,870,780 N
				12.00 *	12.00 *
			HMS	1,545,363 W	1,545,363 W
15.	HMS225 -	PRIVATE HOUSING DEVELOPMENT & OWNERSHIP			
		OPERATING	HMS	1,421,513 N	1,421,514 N
				2.00 *	2.00 *
			HMS	5,649,020 W	5,649,020 W
16.	HMS222 -	RENTAL ASSISTANCE SERVICES			
		OPERATING	HMS	1,232,968 A	1,233,027 A
				14.75 *	14.75 *
			HMS	25,563,391 N	25,563,392 N
17.	HMS224 -	HOMELESS SERVICES			
		OPERATING	HMS	11,276,608 A	14,111,698 A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		INVESTMENT CAPITAL	HMS	1,369,108 N	1,369,108 N
			HMS	850,000 C	1,454,000 C
18.	HMS605 -	COMMUNITY-BASED RESIDENTIAL SUPPORT			
	OPERATING		HMS	16,982,395 A	17,125,395 A
19.	HMS401 -	HEALTH CARE PAYMENTS			
	OPERATING		HMS	479,133,108 A	498,189,087 A
			HMS	672,850,832 N	693,906,153 N
			HMS	44,409,563 U	44,409,563 U
20.	HMS236 -	CASE MANAGEMENT FOR SELF-SUFFICIENCY			
	OPERATING		HMS	343.21 *	347.35 *
			HMS	14,339,879 A	14,342,932 A
			HMS	278.79 *	281.65 *
			HMS	16,822,324 N	18,601,611 N
21.	HMS238 -	DISABILITY DETERMINATION			
	OPERATING		HMS	45.00 *	45.00 *
			HMS	5,400,884 N	5,838,171 N
22.	ATG500 -	CHILD SUPPORT ENFORCEMENT SERVICES			
	OPERATING		ATG	84.32 *	85.00 *
			ATG	3,840,067 A	4,177,824 A
			ATG	163.68 *	165.00 *
			ATG	15,548,458 N	15,440,933 N
			ATG	2,258,937 T	2,149,383 T
23.	HMS237 -	EMPLOYMENT AND TRAINING			
	OPERATING		HMS	491,214 A	491,214 A
			HMS	1,197,541 N	1,197,541 N
24.	HHL602 -	PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS			
	OPERATING		HHL	14.00 *	14.00 *
			HHL	679,070 A	679,274 A
			HHL	66.00 *	66.00 *
			HHL	5,649,008 B	5,063,477 B
			HHL	16,393,455 N	9,600,545 N
			HHL	51.00 *	51.00 *
			HHL	3,878,386 T	3,640,482 T
	INVESTMENT CAPITAL		HHL	375,000 C	550,000 C
			HHL	E	100,000,000 E
25.	HHL625 -	MANAGEMENT & GENERAL SUPPORT FOR HAWAIIAN HOMESTEADS			
	OPERATING		HHL	4.00 *	4.00 *
			HHL	490,104 A	204,425 A
			HHL	34.00 *	34.00 *
			HHL	3,768,232 B	5,605,431 B
			HHL	26.00 *	26.00 *
			HHL	1,709,126 T	2,519,289 T
26.	HTH904 -	EXECUTIVE OFFICE ON AGING			
	OPERATING		HTH	3.30 *	3.74 *
			HTH	6,370,552 A	6,119,214 A
			HTH	7.45 *	8.01 *
	INVESTMENT CAPITAL		HTH	7,443,720 N	7,443,720 N
			HTH	250,000 C	800,000 C
27.	HTH520 -	DISABILITY AND COMMUNICATIONS ACCESS BOARD			
	OPERATING		HTH	5.00 *	5.00 *
			HTH	1,333,468 A	1,381,468 A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
			HTH	10,000 B 2.00 *	10,000 B 2.00 *
			HTH	204,812 U	204,812 U
28.	HMS902 -	GENERAL SUPPORT FOR HEALTH CARE PAYMENTS			
	OPERATING		HMS	100.74 * 10,143,198 A	120.74 * 10,085,882 A
			HMS	105.26 * 17,805,248 N	126.26 * 19,258,943 N
29.	HMS903 -	GENERAL SUPPORT FOR SELF SUFFICIENCY SERVICES			
	OPERATING		HMS	62.96 * 10,444,592 A	62.96 * 10,420,477 A
			HMS	57.04 * 59,079,035 N	62.04 * 55,059,052 N
30.	HMS904 -	GENERAL ADMINISTRATION (DHS)			
	OPERATING		HMS	174.34 * 9,255,728 A	174.34 * 4,894,274 A
			HMS	15.66 * 1,588,905 N	15.66 * 1,403,694 N
31.	HMS901 -	GENERAL SUPPORT FOR SOCIAL SERVICES			
	OPERATING		HMS	27.56 * 3,148,835 A	27.56 * 2,883,925 A
			HMS	19.44 * 2,367,302 N	19.44 * 2,416,659 N
	INVESTMENT CAPITAL		HMS	750,000 C	C

G. FORMAL EDUCATION

1. EDN100 - SCHOOL-BASED BUDGETING

OPERATING	EDN	12,338.60 * 774,244,048 A	12,352.60 * 772,086,697 A
	EDN	6,280,000 B	6,780,000 B
	EDN	171,923,444 N	171,760,198 N
	EDN	6,300,000 T	13,750,000 T
	EDN	3,000,000 U	4,000,000 U
	EDN	3,398,000 W	3,398,000 W
INVESTMENT CAPITAL	EDN	291,958,000 B	310,193,000 B
	EDN	650,000 C	3,000,000 C
	EDN	1,428,000 R	R
	EDN	50,000,000 A	A

2. EDN150 - COMPREHENSIVE STUDENT SUPPORT SERVICES

OPERATING	EDN	5,615.50 * 361,156,533 A	5,728.50 * 355,373,685 A
		2.00 *	2.00 *
	EDN	49,050,756 N	49,050,756 N
	EDN	2,000,000 W	2,000,000 W

3. EDN200 - INSTRUCTIONAL SUPPORT

OPERATING	EDN	232.50 * 34,454,113 A	234.50 * 33,297,750 A
		6.00 *	6.00 *
	EDN	1,600,000 B	1,700,000 B
	EDN	2,222,450 N	2,026,461 N
	EDN	800,000 U	800,000 U

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
4.	EDN300	- STATE AND COMPLEX AREA ADMINISTRATION			
	OPERATING		EDN	559.00 *	559.00 *
			EDN	50,381,509A	55,557,715 A
				90,000N	90,000N
5.	EDN400	- SCHOOL SUPPORT			
	OPERATING		EDN	644.00 *	644.00 *
			EDN	170,290,488A	169,455,447 A
				726.50 *	726.50 *
			EDN	23,112,819B	23,112,819B
				3.00 *	3.00 *
			EDN	35,659,876N	35,659,880N
				4.00 *	4.00 *
			EDN	6,000,000 W	7,022,625 W
6.	EDN500	- SCHOOL COMMUNITY SERVICES			
	OPERATING		EDN	35.50 *	35.50 *
			EDN	11,035,725A	8,792,776 A
			EDN	1,939,006B	1,939,006 B
			EDN	3,260,007N	3,260,007N
			EDN	8,500,000U	9,000,000 U
			EDN	8,030,000 W	8,030,000 W
7.	EDN600	- CHARTER SCHOOLS			
	OPERATING		EDN	51,635,990A	57,745,483 A
8.	EDN941	- RETIREMENT BENEFITS PAYMENTS-DOE			
	OPERATING		EDN	217,887,927A	292,266,171 A
9.	EDN943	- HEALTH PREMIUM PAYMENTS-DOE			
	OPERATING		EDN	167,498,112A	179,194,071 A
10.	EDN915	- DEBT SERVICE PAYMENTS-DOE			
	OPERATING		EDN	226,612,463 A	236,896,511 A
11.	AGS807	- SCHOOL R&M, NEIGHBOR ISLAND DISTRICTS			
	OPERATING		AGS	85.00 *	85.00 *
			AGS	4,896,812A	4,813,844 A
				1,000,000U	1,000,000 U
12.	EDN407	- PUBLIC LIBRARIES			
	OPERATING		EDN	555.55 *	555.55 *
			EDN	30,556,588A	29,967,463 A
			EDN	3,125,000B	3,125,000 B
			EDN	1,365,244N	1,365,244 N
	INVESTMENT CAPITAL		AGS	16,425,000 C	7,100,000 C
13.	DEF114	- HAWAII NATIONAL GUARD YOUTH CHALLENGE ACADEMY			
	OPERATING		DEF	1,349,934A	1,373,245 A
			DEF	2,054,016N	2,098,686 N
14.	UOH100	- UNIVERSITY OF HAWAII, MANOA			
	OPERATING		UOH	3,543.84 *	3,614.34 *
			UOH	237,907,514A	255,006,574 A
				251.25 *	291.25 *
			UOH	200,523,383B	220,973,088 B
				78.06 *	78.06 *
			UOH	5,485,593N	5,485,593 N
				134.25 *	134.25 *
			UOH	75,257,917 W	75,912,132 W

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		INVESTMENT CAPITAL	UOH	1,500,000 B	B
			UOH	7,764,000 C	24,607,000 C
			UOH	E	28,000,000 E
			UOH	N	7,000,000 N
			UOH	800,000 W	7
			UOH	A	12,500,000 A
15.		UOH210 - UNIVERSITY OF HAWAII, HILO		494.25 *	514.75 *
		OPERATING	UOH	32,885,531 A	35,636,988 A
				39.00 *	65.00 *
			UOH	15,731,115 B	22,882,168 B
			UOH	394,543 N	394,543 N
				1.50 *	1.50 *
		INVESTMENT CAPITAL	UOH	3,382,849 W	3,382,849 W
			UOH	35,074,000 C	1,640,000 C
			UOH	3,300,000 N	N
			UOH	2,500,000 R	R
16.		UOH220 - SMALL BUSINESS DEVELOPMENT OPERATING	UOH	993,167 A	993,167 A
17.		UOH700 - UNIVERSITY OF HAWAII, WEST OAHU		85.00 *	93.00 *
		OPERATING	UOH	5,378,427 A	6,319,148 A
			UOH	3,218,568 B	3,768,785 B
			UOH	7,000 N	7,000 N
			UOH	328,960 W	328,960 W
		INVESTMENT CAPITAL	UOH	100,000,000 B	B
			UOH	35,000,000 C	C
18.		UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES		1,771.00 *	1,831.00 *
		OPERATING	UOH	113,037,183 A	125,510,941 A
				82.00 *	82.00 *
			UOH	50,699,176 B	55,219,426 B
				15.60 *	15.60 *
			UOH	4,444,818 N	4,444,818 N
			UOH	4,664,323 W	4,664,323 W
		INVESTMENT CAPITAL	UOH	55,198,000 C	36,407,000 C
19.		UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT		414.00 *	407.50 *
		OPERATING	UOH	41,759,019 A	39,709,051 A
				4.00 *	8.00 *
			UOH	10,938,128 B	21,363,400 B
				4.00 *	4.00 *
			UOH	673,484 N	673,484 N
				5.00 *	15.00 *
		INVESTMENT CAPITAL	UOH	13,157,802 W	13,157,802 W
			UOH	50,000,000 C	63,792,000 C
20.		UOH941 - RETIREMENT BENEFITS PAYMENTS-UH OPERATING	UOH	93,215,574 A	117,780,217 A
21.		UOH943 - HEALTH PREMIUM PAYMENTS-UH OPERATING	UOH	60,826,187 A	58,968,768 A
22.		UOH915 - DEBT SERVICE PAYMENTS-UH OPERATING	UOH	83,868,969 A	87,675,081 A



PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
<b>H. CULTURE AND RECREATION</b>					
1.	UOH881	- UNIVERSITY OF HAWAII, AQUARIA			
	OPERATING		UOH	13.00 * 613,504 A	13.00 * 699,753 A
			UOH	7.00 * 3,143,689 B	7.00 * 3,131,189 B
			UOH	1,000,000 W	1,000,000 W
2.	AGS881	- STATE FOUNDATION ON CULTURE AND THE ARTS			
	OPERATING		AGS	10.00 * 3,134,226 A	10.00 * 2,164,226 A
			AGS	14.00 * 4,471,223 B	17.00 * 4,439,723 B
			AGS	2.00 * 772,791 N	2.00 * 773,134 N
			AGS	625,000 U	625,000 U
3.	AGS818	- KING KAMEHAMEHA CELEBRATION COMMISSION			
	OPERATING		AGS	51,820 A	51,820 A
4.	LNR802	- HISTORIC PRESERVATION			
	OPERATING		LNR	13.00 * 954,937 A	13.00 * 1,123,739 A
			LNR	142,295 B	142,295 B
			LNR	496,629 N	496,629 N
	INVESTMENT CAPITAL		LNR	475,000 C	C
5.	LNR804	- FOREST AND OUTDOOR RECREATION			
	OPERATING		LNR	35.00 * 1,504,967 A	36.00 * 1,542,810 A
			LNR	3.50 * 554,877 B	6.50 * 577,335 B
			LNR	3.50 * 541,066 N	3.50 * 841,066 N
			LNR	605,639 W	605,639 W
	INVESTMENT CAPITAL		LNR	B	400,000 B
			LNR	1,475,000 C	250,000 C
6.	LNR805	- RECREATIONAL FISHERIES			
	OPERATING		LNR	7.00 * 238,640 A	7.00 * 238,640 A
			LNR	75,575 B	75,575 B
			LNR	811,625 N	1,017,825 N
7.	LNR806	- PARKS ADMINISTRATION AND OPERATION			
	OPERATING		LNR	90.00 * 6,554,966 A	90.00 * 5,069,481 A
			LNR	41.00 * 5,534,701 B	41.00 * 6,469,084 B
			LNR	1,218,456 N	1,218,456 N
	INVESTMENT CAPITAL		LNR	20,950,000 C	2,875,000 C
8.	LNR801	- OCEAN-BASED RECREATION			
	OPERATING		LNR	97.00 * 15,913,929 B	105.00 * 16,358,091 B
			LNR	700,799 N	700,799 N
	INVESTMENT CAPITAL		LNR	16,726,000 C	14,860,000 C
			LNR	10,000,000 D	1,000,000 D
			LNR	9,820,000 N	13,820,000 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
9.		AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM			
		OPERATING	AGS	39.50*	39.50*
		INVESTMENT CAPITAL	AGS	8,848,306 B 12,430,000 C	8,486,017 B 25,850,000 C
<b>I. PUBLIC SAFETY</b>					
1.		PSD402 - HALAWA CORRECTIONAL FACILITY			
		OPERATING	PSD	401.00*	401.00*
			PSD	21,952,369 A 28,719 W	21,937,316 A 28,719 W
2.		PSD403 - KULANI CORRECTIONAL FACILITY			
		OPERATING	PSD	77.00*	77.00*
				4,881,247 A	4,897,756 A
3.		PSD404 - WAIAWA CORRECTIONAL FACILITY			
		OPERATING	PSD	113.00*	113.00*
			PSD	5,565,486 A	5,631,099 A
		INVESTMENT CAPITAL	AGS	15,000 W 2,000,000 C	15,000 W C
4.		PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER			
		OPERATING	PSD	161.00*	173.00*
				7,201,189 A	7,577,485 A
5.		PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER			
		OPERATING	PSD	187.00*	187.00*
			PSD	9,289,965 A 209,721 S	8,990,272 A 209,721 S
6.		PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER			
		OPERATING	PSD	494.00*	494.00*
			PSD	26,827,828 A 30,000 W	26,736,399 A 30,000 W
7.		PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER			
		OPERATING	PSD	68.00*	68.00*
				3,412,796 A	3,438,886 A
8.		PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER			
		OPERATING	PSD	132.00*	132.00*
				6,422,056 A	6,388,504 A
9.		PSD410 - INTAKE SERVICE CENTERS			
		OPERATING	PSD	61.00*	61.00*
				3,607,386 A	3,577,794 A
10.		PSD420 - CORRECTIONS PROGRAM SERVICES			
		OPERATING	PSD	184.00*	184.00*
			PSD	18,347,736 A 13,418 N	19,495,405 A 13,418 N
11.		PSD421 - HEALTH CARE			
		OPERATING	PSD	173.10*	201.10*
			PSD	17,322,037 A 52,853 N	20,013,355 A 52,853 N
12.		PSD422 - HAWAII CORRECTIONAL INDUSTRIES			
				2.00*	2.00*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		OPERATING	PSD	7,335,451 W	7,335,451 W
13.	PSD808	- NON-STATE FACILITIES			
		OPERATING	PSD	10.00 * 65,126,204 A	10.00 * 66,256,512 A
14.	PSD502	- NARCOTICS ENFORCEMENT			
		OPERATING	PSD	12.00 * 838,979 A	13.00 * 898,116 A
			PSD	198,536 N	198,536 N
			PSD	78,640 T	8
			PSD	6.00 * 589,549 W	6.00 * 565,549 W
15.	PSD503	- SHERIFF			
		OPERATING	PSD	289.00 * 12,628,813 A	289.00 * 12,823,776 A
			PSD	7.00 * 563,336 N	7.00 * 563,336 N
			PSD	64.00 * 5,277,821 U	64.00 * 5,277,821 U
16.	PSD611	- ADULT PAROLE DETERMINATIONS			
		OPERATING	PSD	3.00 * 238,109 A	3.00 * 238,109 A
17.	PSD612	- ADULT PAROLE SUPERVISION AND COUNSELING			
		OPERATING	PSD	55.00 * 3,534,361 A	55.00 * 3,534,361 A
18.	PSD613	- CRIME VICTIM COMPENSATION COMMISSION			
		OPERATING	PSD	8.00 * 1,843,835 B	8.00 * 1,843,835 B
			PSD	850,000 N	850,000 N
19.	PSD900	- GENERAL ADMINISTRATION			
		OPERATING	PSD	146.10 * 11,797,667 A	149.10 * 10,754,789 A
			PSD	693,832 B	693,832 B
			PSD	75,065 T	75,065 T
			PSD	742,980 X	742,980 X
		INVESTMENT CAPITAL	AGS	5,500,000 C	3,000,000 C
			PSD	9,592,000 C	C
20.	ATG231	- STATE CRIMINAL JUSTICE INFORMATION AND IDENTIFICATION			
		OPERATING	ATG	29.50 * 1,739,321 A	31.50 * 1,772,786 A
			ATG	1.00 * 1,784,282 N	* 1,757,594 N
			ATG	27.50 * 2,721,519 W	29.50 * 2,755,457 W
21.	LNR810	- PREVENTION OF NATURAL DISASTERS			
		OPERATING	LNR	7.50 * 640,686 A	8.50 * 629,779 A
			LNR	B	20,000 B
			LNR	.50 * 269,745 N	.50 * 269,745 N
22.	DEF110	- AMELIORATION OF PHYSICAL DISASTERS			
				123.80 *	134.80 *

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
	OPERATING		DEF	9,275,405 A	13,354,462 A
				72.70 *	76.70 *
			DEF	73,483,166 N	73,825,165 N
			DEF	464,458 S	464,458 S
	INVESTMENT CAPITAL		DEF	12,000,000 U	12,000,000 U
			AGS	5,301,000 C	3,200,000 C
			AGS	100,000 N	100,000 N
			DEF	7,124,000 C	680,000 C
			DEF	51,057,000 N	6,455,000 N

## J. INDIVIDUAL RIGHTS

1.	CCA102 - CABLE TELEVISION			4.00 *	4.00 *
	OPERATING		CCA	3,632,334 B	1,232,334 B
2.	CCA103 - CONSUMER ADVOCATE FOR COMMUNICATION, UTILITIES, AND TRANSPORTATION SERVICES			23.00 *	23.00 *
	OPERATING		CCA	2,705,793 B	2,705,793 B
3.	CCA104 - FINANCIAL INSTITUTION SERVICES			29.00 *	32.00 *
	OPERATING		CCA	2,578,281 B	2,813,840 B
4.	CCA105 - PROFESSIONAL AND VOCATIONAL LICENSING			55.00 *	55.00 *
	OPERATING		CCA	5,331,120 B	5,073,120 B
			CCA	5.00 *	5.00 *
			CCA	2,037,937 T	2,037,937 T
5.	BUF901 - PUBLIC UTILITIES COMMISSION			44.00 *	55.00 *
	OPERATING		BUF	8,695,562 B	10,429,994 B
6.	CCA106 - INSURANCE REGULATORY SERVICES			80.00 *	81.00 *
	OPERATING		CCA	11,945,708 B	13,415,708 B
			CCA	200,000 T	200,000 T
7.	CCA110 - OFFICE OF CONSUMER PROTECTION			16.00 *	16.00 *
	OPERATING		CCA	1,600,284 B	1,600,284 B
			CCA	50,681 T	50,681 T
8.	AGR812 - MEASUREMENT STANDARDS			15.00 *	15.00 *
	OPERATING		AGR	719,145 A	685,389 A
9.	CCA111 - BUSINESS REGISTRATION AND SECURITIES REGULATION			75.00 *	75.00 *
	OPERATING		CCA	6,440,207 B	6,505,207 B
10.	CCA112 - REGULATED INDUSTRIES COMPLAINTS OFFICE			65.00 *	65.00 *
	OPERATING		CCA	5,253,047 B	5,317,369 B
11.	CCA191 - GENERAL SUPPORT			45.00 *	45.00 *
	OPERATING		CCA	5,516,080 B	5,714,830 B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
12.	LTG105	- ENFORCEMENT OF INFORMATION PRACTICES			
	OPERATING		LTG	5.00* 411,475 A	5.00* 401,103 A
13.	BUF151	- OFFICE OF THE PUBLIC DEFENDER			
	OPERATING		BUF	81.00* 9,262,208 A	82.00* 9,320,482 A
14.	LNR111	- CONVEYANCES AND RECORDINGS			
	OPERATING		LNR	60.00* 4,133,370 B	60.00* 4,039,870 B
15.	HMS888	- COMMISSION ON THE STATUS OF WOMEN			
	OPERATING		HMS	1.00* 208,056 A	1.00* 158,079 A
<b>K. GOVERNMENT-WIDE SUPPORT</b>					
1.	GOV100	- OFFICE OF THE GOVERNOR			
	OPERATING		GOV	37.00* 3,894,690 A	37.00* 3,712,323 A
			GOV		R 250,000 R
	INVESTMENT CAPITAL		GOV		U 500,000 U
			GOV	1,000 C	1,000 C
2.	LTG100	- OFFICE OF THE LIEUTENANT GOVERNOR			
	OPERATING		LTG	3.00* 849,617 A	3.00* 828,507 A
3.	BED144	- STATEWIDE PLANNING AND COORDINATION			
	OPERATING		BED	19.00* 1,745,173 A	18.00* 1,681,322 A
			BED	4.00* 2,483,083 N	4.00* 4,336,671 N
			BED	1,000,000 W	1,000,000 W
4.	BED103	- STATEWIDE LAND USE MANAGEMENT			
	OPERATING		BED	6.00* 491,616 A	6.00* 491,668 A
5.	BED130	- ECONOMIC PLANNING AND RESEARCH			
	OPERATING		BED	17.00* 1,145,127 A	17.00* 1,091,287 A
			BED	4.00* 1,590,030 U	5.00* 1,575,737 U
6.	BUF101	- DEPARTMENTAL ADMINISTRATION AND BUDGET DIVISION			
	OPERATING		BUF	49.00* 12,882,630 A	49.00* 12,347,941 A
	INVESTMENT CAPITAL		AGS		C 1,000,000 C
			BUF	341,958,000 C	570,593,000 C
7.	AGS871	- CAMPAIGN SPENDING COMMISSION			
	OPERATING		AGS	5.00* 842,126 T	5.00* 4,670,814 T
8.	AGS879	- OFFICE OF ELECTIONS			
	OPERATING		AGS	17.50* 2,548,529 A .50*	17.50* 2,817,056 A .50*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
			AGS	7,473,364N	7,473,364N
9.	TAX100 - TAXATION				
	OPERATING		TAX	195.50* 9,357,395A	195.50* 8,214,860A
10.	TAX105 - TAX SERVICES AND PROCESSING				
	OPERATING		TAX	138.00* 8,275,362A	138.00* 7,449,735A
11.	TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION				
	OPERATING		TAX	71.00* 7,720,809A	73.00* 8,407,448A
			TAX	452,000B	1.00* 869,000B
12.	AGS101 - STATEWIDE ACCOUNTING SERVICES				
	OPERATING		AGS	7.00* 561,741A	7.00* 561,741A
13.	AGS102 - EXPENDITURE EXAMINATION				
	OPERATING		AGS	18.00* 1,107,886A	18.00* 1,107,886A
14.	AGS103 - RECORDING AND REPORTING				
	OPERATING		AGS	11.00* 799,122A	11.00* 889,122A
15.	AGS104 - INTERNAL POST AUDIT				
	OPERATING		AGS	12.00* 688,994A	12.00* 688,994A
16.	BUF115 - FINANCIAL ADMINISTRATION				
	OPERATING		BUF	14.00* 2,146,480A	14.00* 2,146,541A
			BUF	4.00* 6,031,359T	4.00* 6,031,359T
			BUF	5,525U	5,525U
17.	BUF915 - DEBT SERVICE PAYMENTS				
	OPERATING		BUF	262,785,613A	274,711,259A
			BUF	310,481,432U	324,571,592U
18.	ATG100 - LEGAL SERVICES				
	OPERATING		ATG	234.15* 25,124,297A	245.93* 22,316,113A
			ATG	18.00* 1,893,738B	18.00* 1,889,738B
			ATG	13.00* 8,918,519N	13.00* 8,550,183N
			ATG	3,918,000T	3,918,000T
			ATG	54.85* 8,049,467U	55.35* 7,976,110U
			ATG	3.00* 3,017,834W	4.00* 3,124,819W
19.	AGS131 - INFORMATION PROCESSING SERVICES				
	OPERATING		AGS	170.00* 18,788,346A	170.00* 15,775,353A
			AGS	33.00* 2,237,432U	33.00* 2,237,432U

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		INVESTMENT CAPITAL	AGS	6,195,000 C	2,900,000 C
20.	AGS111 - ARCHIVES - RECORDS MANAGEMENT				
	OPERATING	AGS		20.00 * 1,069,509 A	20.00 * 899,246 A
21.	AGS891 - WIRELESS ENHANCED 911 BOARD OPERATING	AGS		9,000,000 B	9,000,000 B
22.	HRD102 - WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION, AND EFFICIENCY				
	OPERATING	HRD		99.00 * 15,329,604 A	99.00 * 15,021,729 A
		HRD		700,000 B	700,000 B
		HRD		4,886,281 U	4,886,281 U
23.	HRD191 - SUPPORTING SERVICES - HUMAN RESOURCES DEV				
	OPERATING	HRD		13.00 * 1,517,864 A	13.00 * 1,517,864 A
24.	BUF141 - EMPLOYEES' RETIREMENT SYSTEM				
	OPERATING	BUF		83.00 * 11,025,246 X	99.00 * 13,700,216 X
25.	BUF143 - HAWAII EMPLOYER - UNION TRUST FUND				
	OPERATING	BUF		26.00 * 11,681,399 T	27.00 * 4,655,214 T
26.	BUF941 - RETIREMENT BENEFITS PAYMENTS				
	OPERATING	BUF		222,439,828 A	200,054,852 A
		BUF		311,103,501 U	410,046,388 U
27.	BUF943 - HEALTH PREMIUM PAYMENTS				
	OPERATING	BUF		160,087,751 A	155,902,228 A
		BUF		228,324,299 U	238,162,839 U
28.	LNR101 - PUBLIC LANDS MANAGEMENT				
	OPERATING	LNR		51.00 * 11,610,721 B	51.00 * 11,670,721 B
		LNR		74,108 N	74,108 N
		LNR		U	1,000,000 U
	INVESTMENT CAPITAL	LNR		4,230,000 B	2,270,000 B
		LNR		1,660,000 C	14,530,000 C
		LNR		250,000 R	R
		LNR		250,000 S	S
29.	AGS203 - STATE RISK MANAGEMENT AND INSURANCE ADMINISTRATION				
	OPERATING	AGS		4.00 * 4,482,007 A	4.00 * 4,027,480 A
		AGS		21,450,000 W	21,450,000 W
30.	AGS211 - LAND SURVEY				
	OPERATING	AGS		17.00 * 862,481 A	17.00 * 862,481 A
		AGS		285,000 U	285,000 U
31.	AGS223 - OFFICE LEASING				
	OPERATING	AGS		5.00 * 11,661,035 A	5.00 * 11,671,571 A
		AGS		5,500,000 U	5,500,000 U

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
32.	AGS221	PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION		16.00*	16.00*
	OPERATING		AGS	1,542,415 A	1,142,415 A
			AGS	4,000,000 W	4,000,000 W
	INVESTMENT CAPITAL		AGS	27,475,000 C	17,805,000 C
33.	AGS231	CENTRAL SERVICES - CUSTODIAL SERVICES		158.50*	155.50*
	OPERATING		AGS	15,549,399 A	15,107,098 A
			AGS	58,744 B	58,744 B
			AGS	894,001 U	894,001 U
34.	AGS232	CENTRAL SERVICES - GROUNDS MAINTENANCE		38.50*	38.50*
	OPERATING		AGS	1,985,661 A	1,952,149 A
35.	AGS233	CENTRAL SERVICES - BUILDING REPAIRS AND ALTERATIONS		37.00*	40.00*
	OPERATING		AGS	3,185,946 A	3,330,235 A
36.	AGS240	STATE PROCUREMENT		22.00*	23.00*
	OPERATING		AGS	1,281,054 A	1,216,680 A
37.	AGS244	SURPLUS PROPERTY MANAGEMENT		5.00*	5.00*
	OPERATING		AGS	1,742,788 W	1,742,788 W
38.	AGS251	AUTOMOTIVE MANAGEMENT - MOTOR POOL		12.50*	12.50*
	OPERATING		AGS	2,416,689 W	2,416,689 W
39.	AGS252	AUTOMOTIVE MANAGEMENT - PARKING CONTROL		26.50*	26.50*
	OPERATING		AGS	3,334,828 W	3,828,708 W
40.	AGS901	GENERAL ADMINISTRATIVE SERVICES		39.00*	39.00*
	OPERATING		AGS	2,424,641 A	1,179,454 A
			AGS	1.00*	1.00*
			AGS	64,256 U	64,256 U
41.	SUB201	CITY AND COUNTY OF HONOLULU INVESTMENT CAPITAL	CCH	5,100,000 C	200,000 C
42.	SUB301	COUNTY OF HAWAII OPERATING INVESTMENT CAPITAL	SUB <sup>9</sup> COH	580,000 A 12,000,000 U	580,000 A U
43.	SUB401	COUNTY OF MAUI INVESTMENT CAPITAL	COM COM	100,000 C N	3,749,000 C 1,000 N
44.	SUB501	COUNTY OF KAUAI INVESTMENT CAPITAL	COK	C	1,210,000 C"

SECTION 4. Part III, Act 213, Session Laws of Hawaii 2007, is amended:  
 (1) By adding a new section to read as follows:



“SECTION 7.1. Provided that of the special fund appropriation for tourism (BED 113), the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for beach restoration; provided further that restoration projects on resort beaches shall be matched dollar-for-dollar from private sources and shall be on beaches with public access; and provided further that the department shall submit a detailed expenditure report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(2) By adding a new section to read as follows:

“SECTION 14.1. Provided that of the special fund appropriation for Hawaii strategic development corporation (BED 145), the sum of \$8,700,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the renewable hydrogen program; provided further that the funds shall not be expended for any other purpose; provided further that the funds shall only be used by the procurement awarded contractor; provided further that the department shall prepare a report that shall include but not be limited to:

- (1)<sup>10</sup> Appropriate measures of effectiveness of the program;
- (2)<sup>10</sup> Details of all expenditures and awards in fiscal year 2008-2009;
- (3)<sup>10</sup> A financial plan for the renewable hydrogen program, including fiscal year 2008-2009 to fiscal year 2011-2012; and
- (4)<sup>10</sup> A master plan for the renewable hydrogen program detailing planned expenditures, including fiscal year 2008-2009 to fiscal year 2011-2012;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(3) By adding a new section to read as follows:

“SECTION 15.1. Provided that of the general fund appropriation for water and land development (LNR 141) the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the purchase and installation of back flow preventers for Waiahole-Waikane Community Association water system users; provided further that these funds shall not be expended for any other purpose; provided further that the department shall prepare a report on the progress of the installation of the back flow preventers; and provided further the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(4) By adding a new section to read as follows:

“SECTION 15.2. Provided that of the interdepartmental transfer fund appropriation for office of community services (LBR 903), the sum of \$1,200,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended to provide services to those under compacts of free association and for employment core services for low-income persons; and provided further that the department shall submit an expenditure report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(5) By adding a new section to read as follows:

“SECTION 26.1. Provided that of the special fund appropriation for Oahu highways (TRN 501), the sum of \$287,500 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for equipment for stream maintenance; and provided further that the funds shall not be expended for any other purpose.”

(6) By adding a new section to read as follows:

“SECTION 27.1. Provided that of the general fund appropriation for aquatic resources (LNR 401), the sum of \$97,780 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended to fund positions #118784, #118785, #99017C and #116574; provided further that these positions shall be used for the protection of both the monk seal and the turtle population; provided further that no

funds shall be expended should federal funds become available for these positions; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the department shall submit an expenditure report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(7) By amending section 28 to read as follows:

“SECTION 28. Provided that of the general fund and special fund appropriations for native resources and fire protection program (LNR 402), the sums of \$1,000,000 and [~~\$1,000,000;~~] \$3,000,000, respectively, or so much thereof as may be necessary for fiscal year 2007-2008 and [~~the same sums or so much thereof as may be necessary~~] for fiscal year 2008-2009 shall be expended by the department of land and natural resources [~~for improving operations of~~] as directed by the Hawaii invasive species council [to respond to, control, and eradicate] to prevent the introduction of invasive species, implement invasive species control, conduct research and outreach, and eradicate established invasive species; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to their respective funds; provided further that the department shall prepare a report [~~that shall include but not be limited to the overall status of the invasive species efforts for Hawaii and all collected data, measures of effectiveness, cost breakdowns, and outcomes from:~~

- (1) ~~Inspection, detection, and interception of, and percentages of, invasive species at airports and harbors;~~
- (2) ~~Control and eradication of invasive species currently established in Hawaii and;~~
- (3) ~~Proactive steps taken for prevention of the introduction of invasive species, education and awareness efforts, and institution of policies and procedures;~~

and] each year on the statewide strategic plan for the invasive species prevention, control, research, and outreach partnership program, and identification of the short- and long-term needs of the program with specific performance outcomes; provided further that the report shall identify all appropriation transfers (state and non-state) to other departments, including a detailed breakdown of matching non-state funds or equivalent services received by source, including dollar amounts, and how the funds expended addressed the needs of the strategic plan and the strategic plan's performance outcomes; provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session; provided further that the funds to be expended for the program are matched by at least \$4,000,000 in new federal, county, private, and other non-state funds or in-kind services for each fiscal year; provided further that the department shall jointly work with other agencies and the community; [and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2008 and 2009 regular sessions;] and provided further that portions of this appropriation may be transferred to other state departments to be expended for activities related to the statewide invasive species prevention, control, research, and outreach partnership program.”

(8) By adding a new section to read as follows:

“SECTION 30.1. Provided that of the general fund appropriation for conservation and resources enforcement (LNR 405), the sums of:

- (1) \$129,972 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for four (4.00 FTE) conservation and resources enforcement officer positions; and
- (2) \$74,376 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for four (4.00 FTE) clerk typist positions;

provided further that of the special fund appropriation for conservation and resources enforcement (LNR 405), the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for equipment, training, and other start-up costs associated with the conservation and resources enforcement officers; provided further that these expenses shall be considered non-recurring cost items after the close of fiscal year 2008-2009; provided further that the funds shall not be expended for any other purpose; provided further that the department shall prepare a report that shall include but not be limited to improvements made as a result of increased funding for additional conservation and resources enforcement officers and clerical staff, and data relating to the activities of all conservation and resources enforcement officers that denote general locations, dates, and outcomes; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(9) By adding a new section to read as follows:

“SECTION 31.1. Provided that of the general fund appropriation for communicable disease services (HTH 100), the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for HIV/AIDS services; provided further that the funds shall only be used to support additional or continued services in the community on Oahu; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the department shall submit an expenditure report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(10) By adding a new section to read as follows:

“SECTION 37.1. Provided that of the general fund and special fund appropriations for emergency medical services and injury prevention system (HTH 730), the sums of \$2,559,533 and \$1,600,000, respectively, or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for collective bargaining; and provided further that the funds shall not be expended for any other purpose.”

(11) By adding a new section to read as follows:

“SECTION 37.2. Provided that of the special fund appropriation for emergency medical services and injury prevention system (HTH 730), the sum of \$6,882,307 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for trauma and emergency room services and administrative costs associated with implementing a statewide integrated trauma plan; and provided further that the department shall submit a report to the legislature on the expenditures and status of the implementation plan no later than twenty days prior to the convening of the 2009 regular session.”

(12) By amending section 38 to read as follows:

“SECTION 38. Provided that of the general fund and interdepartmental transfer fund appropriations for developmental disabilities (HTH 501), the following sums indicated below for fiscal biennium 2007-2009 shall be used to continue the implementation of Medicaid home & community-based services:

	<u>FY 2007-2008</u>	<u>FY 2008-2009</u>
General funds	\$8,764,412	<del>[\$11,479,791]</del> \$12,703,997
Interdepartmental	\$8,558,196	<del>[\$12,239,470;]</del> \$13,899,141;
Transfer funds		

provided further that the department shall prepare a report that shall include but not be limited to the following information:

- (1) The number of individuals aided by the services provided and the capacity of service provided;

- (2) A performance report of services provided and treatment outcomes; and
- (3) A detailed report on all expenditures;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2008 and 2009 regular sessions.”

- (13) By adding a new section to read as follows:

“SECTION 41.1. Provided that of the interdepartmental transfer fund appropriation for family health (HTH 560), the sum of \$1,600,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the healthy start and enhanced healthy start programs; and provided further that the department shall submit a detailed expenditure report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

- (14) By adding a new section to read as follows:

“SECTION 46.1. Provided that of the general fund appropriation for Hawaii health systems corporation (HTH 210), any amounts allocated for collective bargaining pay increases shall be distributed appropriately and equitably to each of the health care facilities of the corporation.”

- (15) By amending section 48 to read as follows:

“SECTION 48. Provided that of the general fund appropriation for adult mental health—outpatient (HTH 420), the sum of \$10,000,000 or so much thereof as may be necessary for [the] fiscal year 2007-2008 and the [same] sum of \$19,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended by the department of health for purchase of service contracts for services for adults with severe and persistent mental illnesses; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department shall prepare a report that shall include but not be limited to a detailed breakout of services provided and costs incurred, including treatment outcome and performance reports on each service provided; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2008 and 2009 regular sessions.”

- (16) By adding a new section to read as follows:

“SECTION 56.1. Provided that of the general fund appropriation for general support for child care (HMS 302), the sum of \$40,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the state of Hawaii’s share for the Head Start Collaboration federal grant; provided further that the funds shall not be expended for any other purpose.”

- (17) By adding a new section to read as follows:

“SECTION 59.1. Provided that of the general fund appropriation for services to veterans (DEF 112), the sum of \$44,198 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended to provide burial vaults to each neighbor island and county-operated veterans cemeteries to reduce the incidence of sunken gravesites resulting from soil erosion; provided further that the department shall develop a plan to assist neighbor island counties in repairing and maintaining veterans cemeteries; provided further that the department shall prepare a report that shall include but not be limited to:

- (1)<sup>10</sup> The number of burial vaults provided to each neighbor island county veteran’s cemetery;
- (2)<sup>10</sup> The types of repair and maintenance work needed by each cemetery;
- (3)<sup>10</sup> The actions that the department took in assisting the county governments to remedy the needed repairs; and

- (4)<sup>10</sup> Plans to repair and upgrade neighbor island veterans cemeteries, starting with the Kauai veterans cemetery;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(18) By adding a new section to read as follows:

“SECTION 62.1. Provided that of the general fund appropriation for homeless services (HMS 224), the sum of \$3,100,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for homeless services; provided further that the funds shall be allocated as follows:

- (1) \$360,000 for building 36 in Kalaeloa;
- (2) \$550,000 for Kahikolu in Waianae;
- (3) \$300,000 for Kauai Judiciary Building;
- (4) \$40,000 for Wilder House; and
- (5) \$1,850,000 for existing services contracted, other than the four listed above;

and provided further that any unexpended funds shall lapse to the general fund.”

(19) By adding a new section to read as follows:

“SECTION 62.2. Provided that of the general fund appropriation for health care payments (HMS 401), the sum of \$585,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the state children’s health insurance program (SCHIP) Title XXI program; provided further that the funds shall only be expended to provide coverage for SCHIP children with countable family income that exceeds 250 per cent of the federal poverty level (FPL); provided further that any unexpended funds shall lapse to the general fund; provided further that the department of human services shall prepare a report that shall include but not be limited to:

- (1) The total number of enrolled children in SCHIP;
- (2) The total number of enrolled children below and over 250 per cent of FPL; and
- (3) The total number of enrolled children zero to five, six to twelve, and thirteen to nineteen years of age, categorized into the groups mentioned previously in (2);

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(20) By adding a new section to read as follows:

“SECTION 63.1. Provided that of the trust fund appropriation for planning and development for Hawaiian homesteads (HHL 602), the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended to construct a monument to be placed in Kalawao county on Molokai to honor Hansen’s disease patients sent to Kalaupapa; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the Hawaiian home lands trust fund; provided further that the department shall prepare an expenditure report that lists the breakdown of how the funds were expended; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(21) By amending section 66 to read as follows:

“SECTION 66. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$20,105,474 or so much thereof as may be necessary for fiscal year 2007-2008 and the same sum or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended by the department of education as an additional amount to assist schools in the transition to weighted student

formula funding; ~~and~~ provided further that the funds shall be allocated as foundation funds as follows:

- (1) \$63,300 for each elementary school;
- (2) \$84,350 for each middle school;
- (3) \$126,580 for each high school;
- (4) \$147,680 for each combination kindergarten-grade twelve school; and
- (5) \$105,476 for each combination elementary and middle school[-];

and provided further that this sum shall be considered a recurring cost item, which in future fiscal years shall be distributed by the weighted student formula as determined by the committee on weights and/or the board of education."

(22) By amending section 70 to read as follows:

"SECTION 70. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2007-2008 and the same sum or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended by the department of education in conjunction with the Hawaii academy of science for the engineering and science fair[;] to include training teachers to organize and administer the state science and engineering fair and for other related activities; and provided further that any unexpended funds shall lapse to the general fund."

(23) By adding a new section to read as follows:

"SECTION 70.1. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$1,594,788 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended by the department of education to increase the weighted student formula weight for transiency and mobility from .025 to .05; and provided further that this sum shall be considered a recurring cost item, which in future fiscal years shall be distributed by the weighted student formula as determined by the committee on weights and/or the board of education."

(24) By adding a new section to read as follows:

"SECTION 73.1. Provided that of the general fund appropriation for instructional support (EDN 200), the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended by the department for two (2.00 FTE) homeless concerns resource teachers and to address the needs of homeless students across the state; provided further that the department shall prepare a report that shall include but not be limited to a detailed breakout of services provided and costs incurred, including outcome and performance reports on each service provided; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session."

(25) By adding a new section to read as follows:

"SECTION 82.1. Provided that of the general fund appropriation for charter schools (EDN 600), the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended by charter schools to reimburse the members of the charter school review panel for travel expenses incurred; provided further that the funds shall not be expended for any other purpose; provided further that the charter schools shall prepare a report that shall include but not be limited to a detailed breakout of all expenditures relating to the charter school review panel; and provided further that the charter schools shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session."

(26) By amending section 83 to read as follows:

"SECTION 83. Provided that of the general fund appropriation for retirement benefits payments-DOE (EDN 941), the sum of \$140,089,459 or so much thereof as may be necessary for fiscal year 2007-2008 and the sum of [\$141,464,436] \$204,152,282 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used to pay for pension accumulation contributions for department of edu-

cation employees and participating employees of charter schools; provided further that the sum of \$77,798,468 or so much thereof as may be necessary for fiscal year 2007-2008 and the sum of [~~\$78,560,893~~] \$88,113,889 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used to pay for social security/Medicare contributions for department of education employees and participating employees of charter schools; provided further that the amounts shall be transferred to retirement benefits payments (BUF 941) of the department of budget and finance for that purpose; provided further that the funds shall be transferred no later than July 16 of each respective fiscal year; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(27) By amending section 84 to read as follows:

“SECTION 84. Provided that of the general fund appropriation for health premium payments-DOE (EDN 943), the sum of \$167,498,112 or so much thereof as may be necessary for fiscal year 2007-2008 and the sum of [~~\$177,398,618~~] \$179,194,071 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used to pay for health and other benefits provided by the Hawaii employer-union health benefits trust fund or the voluntary employees’ beneficiary association trust (VEBA) for department of education employees and participating employees of charter schools and shall be transferred to health premium payments (BUF 943) of the department of budget and finance for that purpose; provided further that the funds shall be transferred no later than July 16 of each respective fiscal year; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(28) By amending section 85 to read as follows:

“SECTION 85. Provided that of the general fund appropriation for debt service payments-DOE (EDN 915), the sum of \$226,612,463 or so much thereof as may be necessary for fiscal year 2007-2008 and the sum of [~~\$239,861,260~~] \$236,896,511 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used to pay for the debt service on general obligation bonds issued for department of education projects and shall be transferred to debt service payments (BUF 915) of the department of budget and finance for that purpose; provided further that the funds shall be transferred no later than July 16 of each respective fiscal year; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(29) By adding a new section to read as follows:

“SECTION 90.1. Provided that of the general fund appropriation for University of Hawaii, Manoa (UOH 100), the sum of \$2,399,875 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for library collections and services; provided further that the university shall prepare a report that shall include but not be limited to:

- (1) A report on the actual and estimated inflation rate for the cost of books, journals, and electronic resources for the period spanning two years before and three years after fiscal year 2008-2009;
- (2) A financial plan taking into account these inflationary rates and providing suggestions on addressing rising costs of services;
- (3) The use of funds, including the number of resources leased and purchased, and their costs;
- (4) The amount of unexpended funds and the future plans for expending those funds; and
- (5) The sources of all funding given to library services including but not limited to special funds, revolving funds, and donations, including the date, purpose, and amount of allocation;

and provided further that the university shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(30) By adding a new section to read as follows:

“SECTION 90.2. Provided that of the general fund appropriation for University of Hawaii, Manoa (UOH 100), the sum of \$650,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the hyperbaric treatment center; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the university shall submit an expenditure report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(31) By adding a new section to read as follows:

“SECTION 90.3. Provided that of the general fund appropriation for University of Hawaii (UOH 100-900), the following sums or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for security and prevention measures as follows:

<u>Program I.D.</u>	<u>FY 2008-2009</u>
<u>UOH 100</u>	<u>\$ 805,024</u>
<u>UOH 210</u>	<u>\$ 185,689</u>
<u>UOH 700</u>	<u>\$ 12,500</u>
<u>UOH 800</u>	<u>\$2,148,013;</u>

provided further that the university shall prepare a report that shall include but not be limited to:

- (1) The current difficulties faced by the university in providing security and counseling;
- (2) A security plan for each campus and the estimated future need of funds for improving security as well as other preventative measures;
- (3) The use and implementation of funds and the cost of their implementation for fiscal year 2008-2009;
- (4) Any measurable improvements in the efficiency of campus security such as: average response time to calls and disturbances, time to secure campus facilities, and other noticeable improvements as appropriate; and
- (5) The sources of all funding given to security including but not limited to special funds, revolving funds, and donations, including the date, purpose, and amount of allocation;

and provided further that the university shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(32) By adding a new section to read as follows:

“SECTION 92.1. Provided that of the general fund appropriation for University of Hawaii, West Oahu (UOH 700), the sum of \$59,550 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for one (1.00 FTE) information technology specialist (position #79904T); provided further that the funds shall not be expended for any other purpose; provided further that no funds shall be expended should federal funds become available for this position; and provided further that any unexpended funds shall lapse to the general fund.”

(33) By amending section 95 to read as follows:

“SECTION 95. Provided that of the general fund appropriation for retirement benefits payments-UH (UOH 941), the sum of \$60,746,771 or so much thereof as may be necessary for fiscal year 2007-2008 and the sum of [~~\$64,473,642~~] \$80,627,927 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used to pay for pension accumulation contributions for University of Hawaii employees; provided further that the sum of \$32,468,803 or so much thereof as may be necessary for fiscal year 2007-2008 and the sum of [~~\$34,904,925~~] \$37,152,290



or so much thereof as may be necessary for fiscal year 2008-2009 shall be used to pay for social security/Medicare contributions for University of Hawaii employees; provided further that the amounts shall be transferred to retirement benefits payments (BUF 941) of the department of budget and finance for that purpose; provided further that the funds shall be transferred no later than July 16 of each respective fiscal year; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(34) By amending section 96 to read as follows:

“SECTION 96. Provided that of the general fund appropriation for health premium payments-UH (UOH 943), the sum of \$60,826,187 or so much thereof as may be necessary for fiscal year 2007-2008 and the sum of [~~\$65,107,996~~] \$58,968,768 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used to pay for health and other benefits provided by the Hawaii employer-union health benefits trust fund for University of Hawaii employees and shall be transferred to health premium payments (BUF 943) of the department of budget and finance for that purpose; provided further that the funds shall be transferred no later than July 16 of each respective fiscal year; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(35) By amending section 97 to read as follows:

“SECTION 97. Provided that of the general fund appropriation for debt service payments-UH (UOH 915), the sum of \$83,868,969 or so much thereof as may be necessary for fiscal year 2007-2008 and the sum of [~~\$88,772,332~~] \$87,675,081 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used to pay for debt service on general obligation bonds issued for University of Hawaii projects and shall be transferred to debt service payments (BUF 915) of the department of budget and finance for that purpose; provided further that the funds shall be transferred no later than July 16 of each respective fiscal year; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(36) By adding a new section to read as follows:

“SECTION 99.1. Provided that of the special fund appropriation for ocean-based recreation (LNR 801) the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the removal of a derelict abandoned boat on the reef near Lahaina harbor.”

(37) By adding a new section to read as follows:

“SECTION 104.1. Provided that of the general fund appropriation for corrections program services (PSD 420), the sum of \$1,171,962 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for food supplies and repair and maintenance of food service units; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(38) By amending section 105 to read as follows:

“SECTION 105. Provided that of the general fund appropriation for health care (PSD 421), the sum of \$594,788 or so much thereof as may be necessary for fiscal year 2007-2008 and the sum of [~~\$425,124~~] \$1,420,118 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended by the department of public safety for necessary staffing and equipment for mental health services at [~~the Oahu community correctional center, Halawa correctional facility, and the women’s community correctional center;~~] prison facilities statewide; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department shall prepare a report for each facility that shall include but not be limited to:

- (1) Appropriate measures of effectiveness;
- (2) Inmate care based on per-inmate hours of individual and group-based mental health treatment program;
- (3) Level of medical management of mental health section inmates;
- (4) Amount of involuntary treatment, including the use of seclusion, restraints, forced medications, and involuntary hospitalization; and
- (5) The tracking of inmate mental health improvements or regressions while in the corrections system;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2008 and 2009 regular sessions.”

(39) By adding a new section to read as follows:

“SECTION 105.1. Provided that of the general fund appropriation for health care (PSD 421), the sum of \$1,373,836 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for Medicaid expenses, pharmacy costs, and hepatitis C treatments; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(40) By adding a new section to read as follows:

“SECTION 110.1. Provided that of the general fund appropriation for amelioration of physical disasters (DEF 110), the sum of \$1,600,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for land mobile radio system enhancements; provided further that the funds shall not be expended for any other purpose; provided further that no funds shall be expended unless matched by \$6,375,000 in federal funds; and provided further that any unexpended funds shall lapse to the general fund.”

(41) By adding a new section to read as follows:

“SECTION 111.1. Provided that of the special fund appropriation for financial institution services (CCA 104), the sum of \$235,559 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for one (1.00 FTE) money transmitter examiner III, one (1.00 FTE) financial institution examiner II, and one (1.00 FTE) financial institution examiner III for the purpose of licensing and regulation of money transmitters in compliance with Act 153, Session Laws of Hawaii 2006; provided further that the department shall prepare a report that shall include but not limited to:

- (1)<sup>10</sup> A list of money transmitters examined during fiscal year 2008-2009;
- (2)<sup>10</sup> A detailed list of expenditures that resulted from these examinations;
- (3)<sup>10</sup> A detailed list of revenues arising from licensing and regulation activities of the program; and
- (4)<sup>10</sup> A report on the impact, issues, problems, and recommendations on the money transmitter industry;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(42) By adding a new section to read as follows:

“SECTION 112.1. Provided that of the special fund appropriation for business registration and securities regulation (CCA 111), the sum of \$65,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the economic cadre program; provided further that the funds shall not be expended for any other purpose; provided further that the department shall prepare a report that shall include but not be limited to expenditures, outcomes, and measures of effectiveness of the program; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(43) By adding a new section to read as follows:

“SECTION 113.1. Provided that of the interdepartmental transfer fund appropriation for office of the governor (GOV 100), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the fiftieth anniversary of statehood commission; provided further that the funds shall not be expended for any other purpose; provided further that no interdepartmental transfer funds shall be provided unless first matched with \$250,000 in private contributions; provided further that the office of the governor shall prepare a report that shall include but not be limited to a detailed breakdown of recipients of the contracts, services provided, and events planned; and provided further that the office of the governor shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(44) By adding a new section to read as follows:

“SECTION 120.1. Provided that of the general fund and interdepartmental transfer fund appropriations for debt service payments (BUF 915), the sums of \$274,711,259 and \$324,571,592, respectively, or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended to pay for interest and principal on general obligation bonds; provided further that unrequired balances may be transferred only to retirement benefits payments (BUF 941) and health premium payments (BUF 943); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(45) By adding a new section to read as follows:

“SECTION 124.1. Provided that of the other fund appropriation for employees’ retirement system (BUF 141), the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for undertaking a communications campaign to promote and implement the hybrid plan’s service upgrade options; provided further that the department shall prepare a report that shall include but not be limited to:

- (1) The use of funds and services rendered by the contracted consultant, the cost of those services, and the extent of the spending to-date;
- (2) The total number of consultations provided, the number of members served by counseling, and the extent of the marketing campaign;
- (3) The current number of hybrid contributions and the predicted increase in hybrid contributions from service upgrades as a result of the campaign;
- (4) The estimated future cost and use of funds for completing the communications campaign; and
- (5) The problems encountered by the employees’ retirement system, if any, in carrying out the communications campaign and suggested improvements;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(46) By adding a new section to read as follows:

“SECTION 124.2. Provided that of the other fund appropriation for employees’ retirement system (BUF 141), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for maintenance and support of the pension management information system; provided further that this sum shall be considered a non-recurring cost item after the close of fiscal year 2008-2009; provided further that the department shall prepare a report that shall include but not be limited to:

- (1) The use of funds and services rendered by contracted support and the exact cost of those services;

- (2) The estimated future need of funds for hardware and software maintenance, if any, and the reasons for the increase or decrease in need over fiscal years 2007-2008 and 2008-2009; and
- (3) Current and planned actions to realize cost savings by developing in-house expertise or by other methods;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(47) By adding a new section to read as follows:

“SECTION 124.3. Provided that of the trust fund appropriation for Hawaii employer-union trust fund (BUF 143), the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for contracting with an investment consultant for the Hawaii employer-union health benefits trust fund; provided further that this sum shall be considered a non-recurring cost item after the close of fiscal year 2008-2009; provided further that the department shall prepare a report that shall include but not be limited to:

- (1) The use of funds and services rendered by the investment consultant and the cost of those services; and
- (2) The increase in the trust fund by pre-funding and its current unfunded liability, if any;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(48) By adding a new section to read as follows:

“SECTION 124.4. Provided that of the general fund and interdepartmental transfer fund appropriations for retirement benefits payments (BUF 941), the sums of \$200,054,852 and \$410,046,388 respectively, or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the state employer’s share of the employees’ retiree system’s pension accumulation and social security/Medicare payments; provided further that unrequired balances may be transferred only to debt service payments (BUF 915) and health premium payments (BUF 943); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(49) By adding a new section to read as follows:

“SECTION 124.5. Provided that of the general fund and interdepartmental transfer fund appropriations for health premium payments (BUF 943), the sums of \$155,902,228 and \$238,162,839, respectively or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the state employer’s share of health premiums for active employees and retirees; provided further that unrequired balances may be transferred only to debt service payments (BUF 915) and retirement benefits payments (BUF 941); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall be lapsed to the general fund.”

SECTION 5. Part IV, Act 213, Session Laws of Hawaii 2007, is amended by amending section 125 to read as follows:

**“SECTION 125. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED.**

The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects as such projects are listed in this section. Several related or similar projects may be combined into a single project if such combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M	FISCAL M
				YEAR O	YEAR O
				2007-2008 F	2008-2009 F
<b>A. ECONOMIC DEVELOPMENT</b>					
<b>BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT</b>					
1.	BED001	MAUI ECONOMIC DEVELOPMENT BOARD, INC., MAUI			
		DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF A NEW BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		15	
		CONSTRUCTION		285	
		TOTAL FUNDING	BED	300C	C
2.	BED002	HAWAII BUILDING INDUSTRY FOUNDATION, OAHU			
		DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF A TRAINING CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		999	
		TOTAL FUNDING	BED	1,000C	C
<b>AGR122 - PLANT, PEST, AND DISEASE CONTROL</b>					
2.01.		JOINT BIOSECURITY INSPECTION FACILITIES, HONOLULU INTERNATIONAL AIRPORT, OAHU			
		DESIGN AND CONSTRUCTION FOR JOINT BIOSECURITY INSPECTION FACILITIES AT HONOLULU INTERNATIONAL AIRPORT, OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			1
		CONSTRUCTION			9,999
		TOTAL FUNDING	AGR	C	5,000C
			AGR	N	5,000N
<b>AGR141 - AGRICULTURAL RESOURCE MANAGEMENT</b>					
3.	200603	WAIMANALO IRRIGATION SYSTEM IMPROVEMENTS, MAUNAWILI VALLEY, WAIMANALO, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE WAIMANALO IRRIGATION SYSTEM IN MAUNAWILI VALLEY AND OTHER LOCATIONS.			
		PLANS		100	
		DESIGN		580	
		CONSTRUCTION		5,320	
		TOTAL FUNDING	AGR	6,000C	C
4.	P97002	UPCOUNTRY MAUI WATERSHED, MAUI			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF PIPELINE FOR THE UPCOUNTRY MAUI WATERSHED PROJECT, KULA, MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID AND/OR REIMBURSEMENT.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		PLANS		50	50
		LAND		100	100
		DESIGN		200	200
		CONSTRUCTION		2,650	2,650
		TOTAL FUNDING	AGR	1,500C	1,500C
			AGR	1,500N	1,500N
5.	200604	KUNIA AGRICULTURAL PARK, OAHU			
		PLANS TO DEVELOP KUNIA AGRICULTURAL PARK.			
		PLANS		250	
		TOTAL FUNDING	AGR	250C	C
6.	SW0602	STATE IRRIGATION SYSTEM RESERVOIR SAFETY IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR STATEWIDE RESERVOIR SAFETY IMPROVEMENTS.			
		PLANS		520	
		DESIGN		1,080	
		CONSTRUCTION		8,650	
		TOTAL FUNDING	AGR	10,250C	C
7.	P70001	IRRIGATION SYSTEM IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR IRRIGATION SYSTEM IMPROVEMENTS TO EXTEND THE IRRIGATION WATER DISTRIBUTION SYSTEM IN WAIMANALO.			
		DESIGN		25	
		CONSTRUCTION		375	
		TOTAL FUNDING	AGR	400C	C
<b>AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH</b>					
7.01.	RS0702	WAIAHOLE WATER SYSTEM IMPROVEMENTS, OAHU			
		DESIGN FOR IMPROVEMENTS TO THE WAIAHOLE WATER SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			163
		TOTAL FUNDING	AGR	C	57C
			AGR	N	106N
7.02.		GALBRAITH ESTATE, OAHU			
		LAND ACQUISITION TO ACQUIRE LANDS CURRENTLY OWNED BY THE GEORGE GALBRAITH ESTATE IN CENTRAL OAHU.			
		LAND			13,000
		TOTAL FUNDING	AGR	C	13,000C
<b>AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE</b>					
8.	981921	MISCELLANEOUS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS, STATEWIDE			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ADDRESS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS, STATEWIDE.			
		DESIGN		100	200
		CONSTRUCTION		400	300
		TOTAL FUNDING	AGR	500C	500C
9.	P70002	HAWAIIAN HUMANE SOCIETY, OAHU			
		DESIGN AND CONSTRUCTION FOR RENOVATIONS TO THE ANIMAL FACILITIES. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		124	
		TOTAL FUNDING	AGR	125C	C
9.01.		NATIONAL TROPICAL BOTANICAL GARDEN			
		PLANS AND DESIGN FOR A NEW RESEARCH CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			199
		TOTAL FUNDING	AGR	C	200C
<b>LNR153 - COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT</b>					
10.	C00A	ANUENUE FISHERIES RESEARCH CENTER MAINTENANCE AND ELECTRICAL UPGRADES, OAHU			
		DESIGN AND CONSTRUCTION FOR MAINTENANCE AND SAFETY UPGRADES AT THE ANUENUE FISHERIES RESEARCH CENTER, OAHU.			
		DESIGN		30	
		CONSTRUCTION			230
		TOTAL FUNDING	LNR	30C	230C
<b>BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY</b>					
11.	NELH28	INFRASTRUCTURE AND DISTRIBUTION PIPELINES, HAWAII			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR RECONSTRUCTION OF THE 40" DEEP SEAWATER PIPELINE AND OTHER SUBSEA INSTALLATIONS; AND FOR ADDITIONAL INFRASTRUCTURE AND DISTRIBUTION PIPELINES TO EXPAND THE CAPACITY OF THE EXISTING 55" SEAWATER DISTRIBUTION SYSTEM TO MEET FORECASTED DEMAND FOR SEAWATER AND TO INTERFACE TO A FUTURE OCEAN THERMAL ENERGY CONVERSION (OTEC) POWER PLANT. PROJECT TO ALSO INCLUDE ENVIRONMENTAL IMPACT STATEMENT AND ASSOCIATED FILINGS FOR THE OPENING OF EIGHTY THREE ACRES OF LEASABLE LAND.			
		PLANS		1	
		DESIGN		1	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		CONSTRUCTION		3,498	
		EQUIPMENT		1,750	
		TOTAL FUNDING	BED	5,250 C	C
11.01.		NELHA ONSHORE DISTRIBUTION SYSTEM, HAWAII			
		PLANS AND DESIGN FOR ADDITIONAL INFRASTRUCTURE AND DISTRIBUTION PIPELINES TO THE EXISTING 55" SEAWATER SYSTEM TO EXPAND THE SEAWATER DISTRIBUTION CAPACITY OF NELHA AND TO MEET FORECASTED TENANT DEMANDS FOR SEAWATER INTO THE FUTURE.			
		PLANS			180
		DESIGN			360
		TOTAL FUNDING	BED	C	540 C
11.02.		NELHA/HOST PARK INFRASTRUCTURE UPGRADES, HAWAII			
		CONSTRUCTION TO MAKE THE FINAL INTERCONNECTION BETWEEN TWO EXISTING 12" WATER MAINS AND TO COMPLETE A SYSTEM-WIDE UPGRADE.			
		CONSTRUCTION			50
		TOTAL FUNDING	BED	C	50 C
11.03.	NELHA33	NELHA/HOST PARK ROAD AND UTILITY DISTRIBUTION SYSTEM, HAWAII			
		PLANS AND DESIGN FOR ACCESS ROADS AND THE INSTALLATION OF SEWER, POTABLE WATER, SEAWATER, ELECTRICAL, TELEPHONE AND CATV DISTRIBUTION SYSTEMS.			
		PLANS			40
		DESIGN			360
		TOTAL FUNDING	BED	C	400 C
<b>LNR141 - WATER AND LAND DEVELOPMENT</b>					
12.	G21C	NORTH KONA WATER SYSTEM IMPROVEMENTS, HAWAII			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR WATER SYSTEM IMPROVEMENTS, INCLUDING WATER SOURCES, WATERLINES, PRESSURE REDUCING VALVE STATIONS, STORAGE RESERVOIRS, AND OTHER RELATED WORK.			
		PLANS		1,200	1,000
		LAND		5	5
		DESIGN		1,700	1,000
		CONSTRUCTION			9,495
		TOTAL FUNDING	LNR	2,905 U	11,500 U
13.	G76B	WAIMEA WELLS, HAWAII			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR WELL EXPLORATION AND DEVELOPMENT, INCLUDING CASING INSTALLATION, PUMP TESTING, PUMP, CONTROLS, CONNECTING PIPELINE, AND OTHER RELATED WORK.			
		PLANS		1	



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F	
		LAND			1	
		DESIGN			1	
		CONSTRUCTION			1,497	
		TOTAL FUNDING	LNR		1,500 S	S
13.01.		ROCKFALL AND FLOOD MITIGATION, STATEWIDE				
		PLANS, DESIGN, AND CONSTRUCTION FOR ROCKFALL AND FLOOD MITIGATION AT VARIOUS LOCATIONS, STATEWIDE. THE LEGISLATURE FINDS AND DECLARES THAT THIS APPROPRIATION IS IN THE PUBLIC INTEREST AND FOR THE PUBLIC'S HEALTH, SAFETY AND GENERAL WELFARE OF THE STATE.				
		PLANS				70
		DESIGN				200
		CONSTRUCTION				1,500
		TOTAL FUNDING	LNR		C	1,770 C
<b>BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY</b>						
14.	HCD001	HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S COMMUNITY DEVELOPMENT DISTRICTS, OAHU				
		PLANS FOR COSTS RELATED TO WAGES AND FRINGE BENEFITS FOR PERMANENT AND NON-PERMANENT PROJECT-FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S COMMUNITY DEVELOPMENT DISTRICTS. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS AS MAY BE AVAILABLE.				
		PLANS			1,750	1,820
		TOTAL FUNDING	BED		1,750 C	1,820 C
15.	KA016	KAKAAKO DRAINAGE IMPROVEMENT, MAKAI AREA, OAHU				
		DESIGN AND CONSTRUCTION FOR REPAIRS TO OPEN CHANNEL AND BOX DRAIN CULVERT ADJACENT TO KAKAAKO WATERFRONT PARK.				
		DESIGN			1	
		CONSTRUCTION			499	
		TOTAL FUNDING	BED		500 C	C
16.	KL004	KALAELOA SAFETY IMPROVEMENTS, OAHU				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO INSTALL LIFE SAFETY INFRASTRUCTURE IN KALAELOA. PROJECTS MAY INCLUDE: TRAFFIC SIGNALS, DEMOLITION, MARKINGS, SIGNAGE, EMERGENCY CALL BOXES, AND LIGHTING.				
		PLANS			1	49
		DESIGN			1	49
		CONSTRUCTION			124	376
		EQUIPMENT			124	376
		TOTAL FUNDING	BED		250 C	850 C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F	
<b>BED160 - HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION</b>						
17.	HFDC01	WAIAHOLE VALLEY POTABLE WATER SYSTEM REPLACEMENT, OAHU DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A NEW POTABLE WATER RESERVOIR TANK AND DISTRIBUTION SYSTEM TO REPLACE THE EXISTING RESERVOIR. REVOLVING FUNDS FROM THE DWELLING UNIT REVOLVING FUND.				
		DESIGN		500		
		CONSTRUCTION		2,000		
		TOTAL FUNDING	BED	2,500 W		W
18.	HFDC02	WAIMANALO CONSTRUCTION COALITION, OAHU CONSTRUCTION FOR A BASE YARD. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION		125		
		TOTAL FUNDING	BED	125 C		C
18.01.	HFDC03	RELATING TO KUKUI GARDENS RENTAL HOUSING COMPLEX, OAHU CONSTRUCTION TO PRESERVE AFFORDABLE HOUSING BY AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR THE PURCHASE OF A PORTION OF REAL PROPERTY AT KUKUI GARDENS.				
		CONSTRUCTION				26,000
		TOTAL FUNDING	BED	C		26,000 C
18.02.	HFDC04	RENTAL HOUSING TRUST FUND INFUSION, STATEWIDE CONSTRUCTION TO PROVIDE AN INFUSION OF FUNDS TO FINANCE ADDITIONAL AFFORDABLE RENTAL HOUSING STATEWIDE.				
		CONSTRUCTION				15,000
		TOTAL FUNDING	BED	C		15,000 C
18.03.	HFDC 005	DWELLING UNIT REVOLVING FUND INFUSION, STATEWIDE CONSTRUCTION TO PROVIDE AN INFUSION OF FUNDS TO FINANCE ADDITIONAL WORKFORCE AND AFFORDABLE HOUSING STATEWIDE.				
		CONSTRUCTION				10,000
		TOTAL FUNDING	BED	C		10,000 C

**B. EMPLOYMENT****LBR903 - OFFICE OF COMMUNITY SERVICES**

1.	P70003	WAIKIKI COMMUNITY CENTER, OAHU CONSTRUCTION FOR INSTALLATION OF SAFETY PADDING FOR THE PRESCHOOL PLAYGROUND. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION		100		
		TOTAL FUNDING	LBR	100 C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
2.	P70004	THE SALVATION ARMY, OAHU PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RAY AND JOAN KROC COMMUNITY CENTER IN KAPOLEI. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		LAND		1	
		DESIGN		1	
		CONSTRUCTION		1,496	
		EQUIPMENT		1	
		TOTAL FUNDING	LBR	1,500	C
3.	P70005	CATHOLIC CHARITIES OF HAWAII, OAHU DESIGN AND CONSTRUCTION FOR RENOVATION OF THE NEW SOCIAL SERVICES COMMUNITY CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		287	
		TOTAL FUNDING	LBR	288	C
4.	P70006	EASTER SEALS HAWAII, OAHU CONSTRUCTION FOR A MULTI-PROGRAM SERVICE CENTER IN WEST OAHU. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	LBR	1,000	C
5.	P70007	KAUAI ECONOMIC OPPORTUNITY, INC., KAUAI DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF A HOMELESS EMERGENCY SHELTER CERTIFIED KITCHEN. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		72	
		TOTAL FUNDING	LBR	73	C
6.	P70008	ORI ANUENUE HALE, INC., OAHU DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A COMMUNITY SERVICE FACILITY. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		249	
		TOTAL FUNDING	LBR	250	C
7.	P70009	SURFING THE NATIONS FOUNDATION, OAHU LAND ACQUISITION AND CONSTRUCTION FOR THE ACQUISITION AND IMPROVEMENT OF FACILITIES. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		LAND		1	
		CONSTRUCTION		74	
		TOTAL FUNDING	LBR	75	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
8.	P70010	WAIPAHU UNITED CHURCH OF CHRIST, OAHU DESIGN AND CONSTRUCTION FOR IMPROVEMENTS FOR A COMMUNITY CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		249	
		TOTAL FUNDING	LBR	250 C	C
9.	P70011	YMCA OF HONOLULU, OAHU CONSTRUCTION FOR DEVELOPMENT OF PROGRAM FACILITIES. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		250	
		TOTAL FUNDING	LBR	250 C	C
10.	P70012	KEEHI MEMORIAL ORGANIZATION, OAHU DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF AN ADULT DAY HEALTH CENTER AND CHILD CARE CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		999	
		TOTAL FUNDING	LBR	1,000 C	C
10.01.		MAUI ECONOMIC OPPORTUNITY BUS SYSTEM BUILDING, MAUI PLANS, DESIGN, AND CONSTRUCTION FOR A BUS BUILDING TO HOUSE AND PROVIDE MAINTENANCE FACILITIES FOR THE MAUI ECONOMIC OPPORTUNITY BUS SYSTEM ON MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			50
		DESIGN			50
		CONSTRUCTION			900
		TOTAL FUNDING	LBR	C	1,000 C
10.02.		PARENTS AND CHILDREN TOGETHER, OAHU LAND ACQUISITION TO PURCHASE A FACILITY TO BE USED AS TRANSITIONAL HOUSING FOR WOMEN AND CHILDREN. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		LAND			250
		TOTAL FUNDING	LBR	C	250 C
10.03.		MAUI FAMILY YMCA, MAUI CONSTRUCTION TO RENOVATE THE YMCA FACILITY IN KAHULUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION			500
		TOTAL FUNDING	LBR	C	500 C
10.04.		CATHOLIC CHARITIES OF THE DIOCESE OF HONOLULU, OAHU			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		PLANS, DESIGN, AND CONSTRUCTION FOR RENOVATION OF THE PROPERTY IN MAKIKI TO HOUSE CATHOLIC CHARITIES HAWAII'S SOCIAL SERVICES COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			200
		CONSTRUCTION			299
		TOTAL FUNDING	LBR	C	500C
10.05.		KAUAI ECONOMIC OPPORTUNITY, INC., KAUAI			
		LAND ACQUISITION TO PURCHASE THE LAND FOR THE LIHUE EARLY LEARNING CENTER. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		LAND			300
		TOTAL FUNDING	LBR	C	300C
10.06.		WAIKIKI COMMUNITY CENTER, OAHU			
		DESIGN AND CONSTRUCTION FOR THE ELECTRICAL IMPROVEMENT PROJECT. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN			50
		CONSTRUCTION			150
		TOTAL FUNDING	LBR	C	200C
10.07.		IN DIS LIFE, KAUAI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE YOUTH REHABILITATION/EMPOWERMENT PROGRAM. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN			10
		CONSTRUCTION			189
		EQUIPMENT			1
		TOTAL FUNDING	LBR	C	200C
<b>HMS802 - VOCATIONAL REHABILITATION</b>					
11.	P70013	ARC OF HILO, HAWAII			
		CONSTRUCTION FOR THE CLIENT SUPPORT SERVICES COMMUNITY AND TRAINING CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION			250
		TOTAL FUNDING	HMS		250C

C. TRANSPORTATION FACILITIES

TRN102 - HONOLULU INTERNATIONAL AIRPORT

- 1. A06A HONOLULU INTERNATIONAL AIRPORT, NEW PARKING STRUCTURE, OAHU

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		CONSTRUCTION FOR A NEW PARKING STRUCTURE, FACILITIES, AND OTHER RELATED IMPROVEMENTS AT HONOLULU INTERNATIONAL AIRPORT.			
		CONSTRUCTION		16,229	
		TOTAL FUNDING	TRN	16,229E	E
2.	A09A	HONOLULU INTERNATIONAL AIRPORT, NEW CONNECTOR AND AUTOMATED PEOPLE MOVER SYSTEM, OAHU			
		DESIGN AND CONSTRUCTION FOR PREDESIGN, SCHEMATIC DESIGN, AND CONSTRUCTION MANAGEMENT FOR THE AUTOMATED PEOPLE MOVER (APM) SYSTEM AND SUPERSTRUCTURE AND DESIGN OF THE APM SYSTEM, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		9,000	
		CONSTRUCTION		12,256	
		TOTAL FUNDING	TRN	21,256E	E
3.	A11E	HONOLULU INTERNATIONAL AIRPORT, ELLIOTT STREET SUPPORT FACILITIES, OAHU			
		DESIGN AND CONSTRUCTION FOR SUPPORT FACILITIES NEAR ELLIOTT STREET INCLUDING MAINTENANCE FACILITIES, CARGO FACILITIES, RELOCATION OF TAXIWAYS, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		3,337	66
		CONSTRUCTION		11,188	75,804
		TOTAL FUNDING	TRN	14,525E	75,870E
4.	A30A	HONOLULU INTERNATIONAL AIRPORT, ELECTRICAL SYSTEM IMPROVEMENTS, OAHU			
		CONSTRUCTION FOR IMPROVEMENTS TO THE ELECTRICAL DISTRIBUTION SYSTEM AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		31,178	3,000
		TOTAL FUNDING	TRN	22,178E	3,000E
			TRN	9,000N	N
5.	A35C	HONOLULU INTERNATIONAL AIRPORT, SIGNAGE IMPROVEMENTS, OAHU			
		CONSTRUCTION FOR SIGNAGE IMPROVEMENTS IN THE TERMINAL AND OTHER RELATED IMPROVEMENTS.			
		CONSTRUCTION		12,905	
		TOTAL FUNDING	TRN	12,905B	B
6.	A37C	HONOLULU INTERNATIONAL AIRPORT, UTILITY INFRASTRUCTURE IMPROVEMENTS, OAHU			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		CONSTRUCTION FOR IMPROVEMENTS TO THE UTILITY INFRASTRUCTURE SYSTEM AND RELATED IMPROVEMENTS. IMPROVEMENTS MAY INCLUDE WATER, FIRE SPRINKLER, TELEPHONE DISTRIBUTION, SEWER, AND STORM WATER SYSTEMS.			
		CONSTRUCTION		5,855	
		TOTAL FUNDING	TRN	5,855 B	B
7.	A41Q	HONOLULU INTERNATIONAL AIRPORT, NEW MAUKA CONCOURSE IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR A NEW COMMUTER TERMINAL, THE CONSTRUCTION OF A NEW MAUKA CONCOURSE NEAR THE INTERISLAND TERMINAL, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		4,276	30
		CONSTRUCTION		3,064	960
		TOTAL FUNDING	TRN	7,340 E	990 E
8.	A41R	HONOLULU INTERNATIONAL AIRPORT, DIAMOND HEAD CONCOURSE IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR THE RELOCATION OF TENANTS AT THE DIAMOND HEAD CONCOURSE, DEMOLITION OF THE EXISTING AND REPLACEMENT OF A NEW DIAMOND HEAD CONCOURSE, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		15,355	125
		CONSTRUCTION		20,750	7,070
		TOTAL FUNDING	TRN	36,105 E	7,195 E
9.	A41S	HONOLULU INTERNATIONAL AIRPORT, PROGRAM MANAGEMENT, OAHU			
		DESIGN FOR PROGRAM MANAGEMENT OF THE TERMINAL MODERNIZATION PROGRAM AT THE AIRPORT.			
		DESIGN		25,000	
		TOTAL FUNDING	TRN	25,000 E	E
9.01.	A06B	HONOLULU INTERNATIONAL AIRPORT, NEW PARKING STRUCTURE AT LOT F, OAHU			
		CONSTRUCTION OF NEW PARKING STRUCTURE AT RENTAL LOT F.			
		CONSTRUCTION			50,800
		TOTAL FUNDING	TRN	E	50,800 E
9.02.	A23L	HONOLULU INTERNATIONAL AIRPORT, RECONSTRUCT TAXIWAYS AND RUNWAYS, OAHU			
		DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS.			
		DESIGN			2,910
		CONSTRUCTION			12,501
		TOTAL FUNDING	TRN	E	15,411 E

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F	
9.03.	A23M	HONOLULU INTERNATIONAL AIRPORT, AIRFIELD WATERLINE REPLACEMENT, OAHU				
		DESIGN FOR THE REPLACEMENT OF 12" AIRFIELD WATERLINE, 6" LAGOON DRIVE WATERLINE AND OTHER RELATED IMPROVEMENTS.				
		DESIGN				1,400
		TOTAL FUNDING	TRN	E		1,400E
9.04.	A32A	HNL, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, OAHU				
		CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION				7,205
		TOTAL FUNDING	TRN	E		2,705E
			TRN	N		4,500N
9.05.	A32B	HONOLULU INTERNATIONAL AIRPORT, AIRPORT SECURITY IMPROVEMENTS, OAHU				
		CONSTRUCTION TO REINFORCE PERIMETER GATES, INSTALL NEW FENCING, INSTALL VEHICLE BARRIER AT ACCESS A, INSTALL GUARD SHACKS AND LIGHTING AT PARKING LOT ENTRANCES AND OTHER RELATED IMPROVEMENTS.				
		CONSTRUCTION				2,709
		TOTAL FUNDING	TRN	E		2,709E
9.06.	A41O	HONOLULU INTERNATIONAL AIRPORT, TERMINAL ROOF AND CEILING REPLACEMENT, OAHU				
		CONSTRUCTION OF TERMINAL ROOF AND CEILING REPLACEMENT INCLUDING ASBESTOS REMOVAL, DRAINAGE IMPROVEMENTS, AND OTHER RELATED IMPROVEMENTS.				
		CONSTRUCTION				7,035
		TOTAL FUNDING	TRN	E		7,035E
9.07.	A41X	HONOLULU INTERNATIONAL AIRPORT, EWA CONCOURSE IMPROVEMENTS, OAHU				
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS NEAR THE EWA CONCOURSE.				
		DESIGN				2,310
		CONSTRUCTION				43,871
		TOTAL FUNDING	TRN	E		46,181E

## TRN104 - GENERAL AVIATION

10. A71C KALAELOA AIRPORT, FACILITY IMPROVEMENTS, OAHU



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		CONSTRUCTION FOR KALAELOA AIRPORT FACILITY IMPROVEMENTS INCLUDING LEASE LOTS, APRONS, RUNWAYS, TAXIWAYS, AND AVIATION FACILITIES SUCH AS THE CONTROL TOWER, AIRPORT RESCUE FIRE FIGHTING (ARFF) BUILDING, T-HANGAR, AVIATION FUEL SYSTEM, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		6,455	
		TOTAL FUNDING	TRN	650B	B
			TRN	5,805N	N
<b>TRN111 - HILO INTERNATIONAL AIRPORT</b>					
11.	B10B	HILO INTERNATIONAL AIRPORT, CARGO BUILDING AND RAMP, HAWAII			
		CONSTRUCTION FOR ADDITIONAL CARGO FACILITIES WITHIN THE AIRPORT INCLUDING A CARGO RAMP AND OTHER RELATED IMPROVEMENTS.			
		CONSTRUCTION		20,850	
		TOTAL FUNDING	TRN	20,850B	B
12.	B10V	HILO INTERNATIONAL AIRPORT, TAXIWAY F IMPROVEMENTS, HAWAII			
		DESIGN FOR TAXIWAY F AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			405
		TOTAL FUNDING	TRN	B	405B
13.	B10W	HILO INTERNATIONAL AIRPORT, PARKING LOT EXPANSION, HAWAII			
		CONSTRUCTION FOR ADDITIONAL PARKING SPACES AND OTHER RELATED IMPROVEMENTS AT THE AIRPORT.			
		CONSTRUCTION			3,235
		TOTAL FUNDING	TRN	B	3,235B
13.01.	B10N	HILO INTERNATIONAL AIRPORT, NOISE ATTENUATION FOR KEAUKAHA SUBDIVISION, HAWAII			
		DESIGN FOR NOISE ATTENUATION OF PROPERTIES WITHIN THE 65-75 DNL CONTOUR RANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			5,500
		TOTAL FUNDING	TRN	E	550E
			TRN	N	4,950N

**TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOLE**

- 14. C03T KONA INTERNATIONAL AIRPORT AT KEAHOLE, TERMINAL EXPANSION, HAWAII
- CONSTRUCTION FOR THE TERMINAL EXPANSION PROGRAM.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		CONSTRUCTION		6,460	
		TOTAL FUNDING	TRN	6,460E	E
15.	C03V	KONA INTERNATIONAL AIRPORT AT KEAHOLE, PARKING LOT EXPANSION, HAWAII			
		CONSTRUCTION FOR ADDITIONAL PARKING SPACES AND OTHER RELATED IMPROVEMENTS AT THE AIRPORT.			
		CONSTRUCTION		7,105	
		TOTAL FUNDING	TRN	7,105B	B
16.	C03W	KONA INTERNATIONAL AIRPORT AT KEAHOLE, STORMWATER PERMIT COMPLIANCE, HAWAII			
		CONSTRUCTION FOR ENVIRONMENTAL IMPROVEMENTS INCLUDING INSTALLATION OF WASHRACKS AND OTHER RELATED IMPROVEMENTS TO MEET ENVIRONMENTAL REGULATIONS.			
		CONSTRUCTION		1,256	
		TOTAL FUNDING	TRN	1,256B	B
17.	C03X	KONA INTERNATIONAL AIRPORT AT KEAHOLE, PROGRAM MANAGEMENT SUPPORT, HAWAII			
		DESIGN FOR PROGRAM MANAGEMENT OF THE EXPANSION PROGRAM AT THE AIRPORT.			
		DESIGN		250	
		TOTAL FUNDING	TRN	250B	B
17.01.	C03Y	KONA INTERNATIONAL AIRPORT AT KEAHOLE, EXISTING TERMINAL IMPROVEMENTS			
		CONSTRUCTION OF IMPROVEMENTS TO THE EXISTING TERMINAL.			
		CONSTRUCTION			3,000
		TOTAL FUNDING	TRN	E	3,000E

TRN131 - KAHULUI AIRPORT

18.	D04D	KAHULUI AIRPORT, TERMINAL IMPROVEMENTS, MAUI			
		DESIGN AND CONSTRUCTION OF TERMINAL IMPROVEMENTS INCLUDING AN ADDITIONAL GATE, LOFT SPACE, CONFERENCE ROOM, FAMILY RESTROOMS, REROOFING, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		605	
		CONSTRUCTION		8,415	3,880
		TOTAL FUNDING	TRN	9,020E	3,880E
19.	D04M	KAHULUI AIRPORT, ACCESS ROAD, MAUI			
		CONSTRUCTION FOR A NEW ACCESS ROAD TO THE AIRPORT FROM HANA HIGHWAY. IMPROVEMENTS INCLUDE SITE WORK, PAVING, ELECTRICAL, DRAINAGE, UTILITIES, AND OTHER RELATED IMPROVEMENTS.			
		CONSTRUCTION		22,313	13,000
		TOTAL FUNDING	TRN	22,313B	B
			TRN	E	13,000E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009	
20.	D04O	KAHULUI AIRPORT, PROGRAM MANAGEMENT SUPPORT, MAUI DESIGN FOR PROGRAM MANAGEMENT OF THE MODERNIZATION PROGRAM AT THE AIRPORT. DESIGN			250	
		TOTAL FUNDING	TRN		250B	B
21.	D06B	KAHULUI AIRPORT, PARKING LOT EXPANSION, MAUI DESIGN AND CONSTRUCTION OF ADDITIONAL PARKING SPACES AND OTHER RELATED IMPROVEMENTS AT THE AIRPORT. DESIGN			1,005	
		CONSTRUCTION				16,100
		TOTAL FUNDING	TRN	1,005B		6,460B
			TRN		E	9,640E
22.	D08O	KAHULUI AIRPORT, STORMWATER PERMIT COMPLIANCE, MAUI CONSTRUCTION FOR ENVIRONMENTAL IMPROVEMENTS INCLUDING INSTALLATION OF WASHRACKS AND OTHER RELATED IMPROVEMENTS TO MEET ENVIRONMENTAL REGULATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. CONSTRUCTION			4,201	949
		TOTAL FUNDING	TRN	3,252B		B
					E	949E
			TRN		949N	N
22.01.	D04P	KAHULUI AIRPORT, ELEVATOR AND ESCALATOR IMPROVEMENTS, MAUI DESIGN FOR ELEVATOR AND ESCALATOR REPLACEMENT AND OTHER RELATED IMPROVEMENTS AT THE AIRPORT. DESIGN				1,005
		TOTAL FUNDING	TRN		E	1,005E
22.02.	D04Q	KAHULUI AIRPORT, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, MAUI CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. CONSTRUCTION				3,936
		TOTAL FUNDING	TRN		E	1,521E
					N	2,415N
22.03.	D10B	KAHULUI AIRPORT, RECONSTRUCT TAXIWAYS AND RUNWAYS, MAUI DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS. DESIGN				1,282
		CONSTRUCTION				4,707
		TOTAL FUNDING	TRN		E	5,989E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
<b>TRN141 - MOLOKAI AIRPORT</b>					
23.	D55B	MOLOKAI AIRPORT ARFF STATION IMPROVEMENTS, MOLOKAI			
		CONSTRUCTION FOR THE MOLOKAI AIRPORT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION IMPROVEMENTS INCLUDING SITE WORK, DEMOLITION, RECONSTRUCTION AND/OR REPLACEMENT OF BUILDING, UTILITIES, DRIVEWAY WITH PARKING AREA, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		6,910	
		TOTAL FUNDING	TRN	700B	B
			TRN	6,210N	N
<b>TRN151 - LANAI AIRPORT</b>					
24.	D70E	LANAI AIRPORT, GENERAL AVIATION APRON, LANAI			
		CONSTRUCTION FOR A GENERAL AVIATION APRON AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		3,530	
		TOTAL FUNDING	TRN	10B	B
			TRN	3,344N	N
			TRN	176R	R
<b>TRN161 - LIHUE AIRPORT</b>					
25.	E03R	LIHUE AIRPORT, PARKING LOT EXPANSION, KAUAI			
		CONSTRUCTION FOR ADDITIONAL PARKING SPACES AND OTHER RELATED IMPROVEMENTS AT THE AIRPORT.			
		CONSTRUCTION			3,185
		TOTAL FUNDING	TRN	B	3,185B
25.01.	E03Q	LIHUE AIRPORT, INLINE BAGGAGE SYSTEM IMPROVEMENTS, KAUAI			
		CONSTRUCTION OF INLINE BAGGAGE SYSTEM IMPROVEMENTS INCLUDING EXPLOSIVE DETECTION SYSTEMS, BAGGAGE BELT CONVEYORS AND OTHER RELATED IMPROVEMENTS.			
		CONSTRUCTION			6,460
		TOTAL FUNDING	TRN	E	6,460E
25.02.	E03O	LIHUE AIRPORT, AHUKINI DUMP RESTORATION, KAUAI			
		CONSTRUCTION FOR THE RESTORATION OF THE AHUKINI DUMP AT LIHUE AIRPORT.			
		CONSTRUCTION			784
		TOTAL FUNDING	TRN	E	784E
25.03.	E03S	LIHUE AIRPORT, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, KAUAI			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			1,899
		TOTAL FUNDING	TRN	E	528 E
			TRN	N	1,371 N
<b>TRN195 - AIRPORTS ADMINISTRATION</b>					
26.	F04J	AIRPORT PLANNING STUDY, STATEWIDE			
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, NOISE MONITORING STUDIES, NOISE COMPATIBILITY STUDIES, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS.			
		PLANS		700	500
		TOTAL FUNDING	TRN	700 B	500 B
27.	F04S	KONA INTERNATIONAL AIRPORT AT KEAHOLE, ENVIRONMENTAL IMPACT STATEMENT, HAWAII			
		PLANS FOR AN ENVIRONMENTAL IMPACT STATEMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS			1,500
		TOTAL FUNDING	TRN	B	150 B
			TRN	N	1,350 N
28.	F05D	LOADING BRIDGE MODERNIZATION, STATEWIDE			
		CONSTRUCTION FOR THE INSTALLATION OF NEW PASSENGER LOADING BRIDGES, THE REMOVAL OF THE EXISTING LOADING BRIDGES, AND OTHER RELATED IMPROVEMENTS AT AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).			
		CONSTRUCTION		23,901	
		TOTAL FUNDING	TRN	23,901 B	B
29.	F05F	STREET AND OUTDOOR LIGHTING IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR STREET AND OUTDOOR LIGHTING IMPROVEMENTS AT STATEWIDE AIRPORTS.			
		DESIGN		205	
		CONSTRUCTION			1,280
		TOTAL FUNDING	TRN	205 B	1,280 B
30.	F08F	AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECT STAFF COSTS, STATEWIDE			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM PROJECT RELATED POSITIONS. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES)			
		PLANS		370	370
		DESIGN		300	300
		CONSTRUCTION		1,661	1,750
		TOTAL FUNDING	TRN	2,231 B	2,320 B
			TRN	100 X	100 X
31.	F08G	MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE			
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS AT VARIOUS STATE AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT.			
		DESIGN		1,000	1,000
		CONSTRUCTION		2,500	2,500
		TOTAL FUNDING	TRN	3,500 B	3,500 B
32.	F08O	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSTRUCTION MANAGEMENT SUPPORT AT AIRPORT FACILITIES, STATEWIDE.			
		CONSTRUCTION		300	
		TOTAL FUNDING	TRN	300 B	B
33.	F08Q	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE			
		DESIGN AND CONSTRUCTION OF VARIOUS PROJECTS REQUIRING ARCHITECTURAL OR ENGINEERING CONSULTANT SUPPORT AT AIRPORTS, STATEWIDE.			
		DESIGN		250	250
		CONSTRUCTION		250	250
		TOTAL FUNDING	TRN	500 B	500 B
33.01.	F05C	STRUCTURAL IMPROVEMENTS TO AIRFIELD PAVING, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS AT STATEWIDE AIRPORTS. IMPROVEMENTS INCLUDE PAVING, MILL AND REPLACE, RECONSTRUCTION, GROOVING, PAINTING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			1,000

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		CONSTRUCTION			6,350
		TOTAL FUNDING	TRN	E	7,350 E
33.02.	F08P	STORMWATER PERMIT COMPLIANCE, STATEWIDE			
		CONSTRUCTION FOR ENVIRONMENTAL IMPROVEMENTS AT STATEWIDE AIRPORTS, INCLUDING INSTALLATION OF WASHRACKS AND OTHER RELATED IMPROVEMENTS TO MEET ENVIRONMENTAL REGULATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			1,696
		TOTAL FUNDING	TRN	E	454 E
			TRN	N	1,242 N
33.03.	F08V	AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) FACILITY IMPROVEMENTS, STATEWIDE			
		DESIGN OF IMPROVEMENTS NECESSARY TO RENOVATE AND/OR CONSTRUCT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATIONS, TRAINING PITS, ENCLOSE NEW AND/OR RESERVE ARFF VEHICLES AND OTHER RELATED IMPROVEMENTS AT STATEWIDE AIRPORTS.			
		DESIGN			1,000
		TOTAL FUNDING	TRN	E	1,000 E
<b>TRN301 - HONOLULU HARBOR</b>					
34.	J20	IMPROVEMENTS TO PIERS 39-40 COMPLEX, HONOLULU HARBOR, OAHU			
		DESIGN FOR IMPROVEMENTS TO THE PIER 39-40 AREA INCLUDING DEMOLITION OF BUILDINGS AND OTHER IMPROVEMENTS.			
		DESIGN			700
		TOTAL FUNDING	TRN		700 B
35.	J33	KAPALAMA CONTAINER TERMINAL FACILITY, HONOLULU HARBOR, OAHU			
		DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A NEW CONTAINER TERMINAL FACILITY AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			500
		CONSTRUCTION			1,000
		TOTAL FUNDING	TRN		1,500 B
36.	J41	IMPROVEMENTS TO PIERS 19-35, HONOLULU HARBOR, OAHU			
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO PIERS 19-35 AREAS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			300
					2,000

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		CONSTRUCTION			2,000
		TOTAL FUNDING	TRN	300 B	4,000 B
37.	J06	SAND ISLAND CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU			
		CONSTRUCTION OF IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, LIGHTING, UTILITIES, AND OTHER IMPROVEMENTS.			
		CONSTRUCTION		3,500	
		TOTAL FUNDING	TRN	3,500 R	R
38.	J07	PIER 51B CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU			
		CONSTRUCTION OF IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, DRAINAGE, UTILITIES, AND OTHER IMPROVEMENTS.			
		CONSTRUCTION		1,900	
		TOTAL FUNDING	TRN	1,900 R	R
38.01.	J42	HMP-KAPALAMA MILITARY RESERVATION IMPROVEMENTS, HONOLULU HARBOR, OAHU			
		DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A NEW CONTAINER TERMINAL FACILITY AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. THIS IS A HARBOR MODERNIZATION PROJECT.			
		DESIGN			26,900
		CONSTRUCTION			3,000
		TOTAL FUNDING	TRN	E	29,900 E
38.02.	J34	PIERS 36 TO 38 IMPROVEMENTS, HONOLULU HARBOR, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT THE DOMESTIC COMMERCIAL FISHING VILLAGE INCLUDING ENVIRONMENTAL STUDIES AND MITIGATION, UTILITY SERVICES, ROADWAYS, PARKING, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN			200
		CONSTRUCTION			650
		TOTAL FUNDING	TRN	B	850 B
<b>TRN303 - KALAELOA BARBERS POINT HARBOR</b>					
38.03.	J43	HMP-KALAELOA BARBERS POINT HARBOR INFRASTRUCTURE IMPROVEMENTS, OAHU			
		DESIGN OF UTILITY AND INFRASTRUCTURE IMPROVEMENTS.			
		DESIGN			300
		TOTAL FUNDING	TRN	E	300 E
38.04.	J44	HMP-KALAELOA BARBERS POINT HARBOR FUEL PIER IMPROVEMENTS, OAHU			



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		DESIGN OF A NEW FUEL PIER AND OTHER SITE RELATED IMPROVEMENTS.			
		DESIGN			6,300
		TOTAL FUNDING	TRN	E	6,300E
<b>TRN305 - KEWALO BASIN</b>					
39.	P70014	KEWALO BASIN IMPROVEMENTS, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR KEWALO BASIN IMPROVEMENTS FOR UTILITIES FOR ALL PIERS AND FACILITIES, HARDSCAPE, AND REPAIR/REPLACEMENT OF PIERS B,C, AND HERRINGBONE.			
		PLANS		29	
		DESIGN		450	
		CONSTRUCTION		4,050	
		EQUIPMENT		1	
		TOTAL FUNDING	TRN	4,530B	B
<b>TRN311 - HILO HARBOR</b>					
40.	L01	NAVIGATIONAL IMPROVEMENTS, HILO HARBOR, HAWAII			
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT HILO HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		700	
		TOTAL FUNDING	TRN	700B	B
40.01.	L12	HMP-PIER 4 INTERISLAND CARGO TERMINAL, HILO HARBOR, HAWAII			
		DESIGN OF ADDITIONAL INTERISLAND CARGO TERMINAL AREA INCLUDING A PIER, YARD, ROADWAYS AND UTILITIES.			
		DESIGN			13,440
		TOTAL FUNDING	TRN	E	13,440E
<b>TRN313 - KAWAIHAE HARBOR</b>					
41.	L03	HARBOR IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII			
		DESIGN AND CONSTRUCTION OF VARIOUS IMPROVEMENTS AT KAWAIHAE HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		200	
		CONSTRUCTION		1,301	
		TOTAL FUNDING	TRN	1,500B	B
			TRN	1N	N
42.	L11	PIER 4 CONSTRUCTION AND SITE WORK IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		DESIGN AND CONSTRUCTION OF A NEW PIER 4, STORAGE YARD AND OTHER RELATED SITE IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		600	
		CONSTRUCTION		4,401	
		TOTAL FUNDING	TRN	5,000B	B
			TRN	1N	N
42.01.	L13	HMP-KAWAIHAE HARBOR DEVELOPMENT PLAN, HAWAII			
		PLANS FOR A DEVELOPMENT PLAN FOR IMPROVING NEW TERMINAL CARGO FACILITIES AT KAWAIHAE HARBOR.			
		PLANS			500
		TOTAL FUNDING	TRN	E	500E
42.02.	L14	HMP-PIER 2 TERMINAL IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII			
		DESIGN AND CONSTRUCTION OF TERMINAL IMPROVEMENTS INCLUDING AND NOT LIMITED TO PAVING, UTILITIES, RELOCATION OF HARBOR AGENTS' OFFICE, AND INTERIM FERRY IMPROVEMENTS.			
		DESIGN			5,000
		CONSTRUCTION			21,000
		TOTAL FUNDING	TRN	E	26,000E
42.03.	L15	HMP-PIER 4, KAWAIHAE HARBOR, HAWAII			
		DESIGN OF A MULTI-USER PIER 4 AND ASSOCIATED SITEWORK ADJACENT TO THE FUTURE PROPOSED PIER 3 INTER-ISLAND TERMINAL BARGE FACILITY.			
		DESIGN			9,000
		TOTAL FUNDING	TRN	E	9,000E
<b>TRN331 - KAHULUI HARBOR</b>					
43.	M09	BARGE TERMINAL IMPROVEMENTS, KAHULUI HARBOR, MAUI			
		CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING YARD, ROADWAY, BUILDING, AND OTHER RELATED IMPROVEMENTS.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	TRN	1,000B	B
44.	M11	NAVIGATIONAL IMPROVEMENTS, KAHULUI HARBOR, MAUI			
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT KAHULUI HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		700	
		TOTAL FUNDING	TRN	700B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
45.	M13	KAHULUI WEST HARBOR DEVELOPMENT PLAN, KAHULUI HARBOR, MAUI  PLANS FOR DEVELOPMENT PLAN FOR IMPROVING NEW TERMINAL CARGO FACILITIES AT THE KAHULUI WEST HARBOR BREAKWATER AREA.			
		PLANS		200	
		TOTAL FUNDING	TRN	200B	B
46.	M14	WHARF STREET SHED DEMOLITION AND SITEWORK IMPROVEMENTS, KAHULUI HARBOR, MAUI  DESIGN AND CONSTRUCTION FOR DEMOLITION OF THE WHARF STREET SHED AND SUBSEQUENT SITEWORK IMPROVEMENTS INCLUDE YARD, ROADWAY, UTILITIES, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		300	
		CONSTRUCTION		2,700	
		TOTAL FUNDING	TRN	3,000B	B
47.	P70015	KAHULUI HARBOR IMPROVEMENTS, MAUI  DESIGN AND CONSTRUCTION OF A PERMANENT COMFORT STATION FOR HARBOR WORKERS.			
		DESIGN		75	
		CONSTRUCTION			500
		TOTAL FUNDING	TRN	75B	500B
47.01.	M15	HMP-KAHULUI HARBOR LAND ACQUISITION AND IMPROVEMENTS, MAUI  LAND ACQUISITION AND DESIGN TO PURCHASE ADDITIONAL LAND AND SUBSEQUENT DESIGN OF IMPROVEMENTS FOR THE ACQUIRED LAND.			
		LAND			15,000
		DESIGN			2,000
		TOTAL FUNDING	TRN	E	17,000E
47.02.	M17	HMP-WEST HARBOR DREDGING AND BREAKWATER, KAHULUI HARBOR, MAUI  DESIGN FOR WEST HARBOR BREAKWATER, DREDGING AND ASSOCIATED IMPROVEMENTS.			
		DESIGN			3,000
		TOTAL FUNDING	TRN	E	3,000E
47.03.	M18	HMP-WEST HARBOR CRUISE TERMINAL, KAHULUI HARBOR, MAUI  DESIGN OF A CRUISE TERMINAL INCLUDING PAVING, UTILITIES, SECURITY AND OTHER SITEWORK IMPROVEMENTS.			
		DESIGN			3,000
		TOTAL FUNDING	TRN	E	3,000E
47.04.	M19	HMP-EAST HARBOR BREAKWATER, KAHULUI HARBOR, MAUI			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		DESIGN OF THE EAST HARBOR BREAKWATER AND RELATED IMPROVEMENTS.			
		DESIGN			3,000
		TOTAL FUNDING	TRN	E	3,000E
47.05.	M20	HMP-PIER 2 IMPROVEMENTS, KAHULUI HARBOR, MAUI			
		DESIGN OF IMPROVEMENTS TO THE PIER, INCLUDING STRENGTHENING, BOLLARD REPLACEMENT, DREDGING AND ENVIRONMENTAL PERMITTING.			
		DESIGN			500
		TOTAL FUNDING	TRN	E	500E
47.06.	M16	HMP-WEST HARBOR BARGE/FERRY SLIP, KAHULUI HARBOR, MAUI			
		DESIGN FOR A NEW WEST HARBOR BARGE/ FERRY SLIP AND ASSOCIATED SITEWORK IMPROVEMENTS.			
		DESIGN			8,000
		TOTAL FUNDING	TRN	E	8,000E
<b>TRN361 - NAWILIWILI HARBOR</b>					
48.	P70016	NAWILIWILI HARBOR, OFFICE BUILDING, KAUAI			
		DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF A MODULE FOR OFFICE SPACE FOR THE SMALL BOAT HARBOR THE HARBOR AGENT.			
		DESIGN		20	
		CONSTRUCTION		182	
		TOTAL FUNDING	TRN	202B	B
48.01.	K11	HMP-MULTI-USE PIER 4, NAWILIWILI HARBOR, KAUAI			
		DESIGN OF NEW PIER IMPROVEMENTS AND RELATED SITE AND UTILITY WORK.			
		DESIGN			300
		TOTAL FUNDING	TRN	E	300E
<b>TRN363 - PORT ALLEN HARBOR</b>					
49.	K05	NAVIGATIONAL IMPROVEMENTS, PORT ALLEN HARBOR, KAUAI			
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT PORT ALLEN HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		500	
		TOTAL FUNDING	TRN	500B	B
<b>TRN395 - HARBORS ADMINISTRATION</b>					
50.	I00	HARBORS DIVISION CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.			
		PLANS		1,258	
		TOTAL FUNDING	TRN	1,258B	B
51.	I01	HARBOR PLANNING, STATEWIDE			
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH, AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.			
		PLANS		850	1,000
		TOTAL FUNDING	TRN	850B	1,000B
52.	I05	MISCELLANEOUS IMPROVEMENTS TO PORT FACILITIES, OAHU			
		CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, MARITIME-INDUSTRIAL FACILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		400	400
		TOTAL FUNDING	TRN	400B	400B
53.	I06	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE			
		DESIGN FOR CONSULTANT SERVICES DURING THE DESIGN OF CAPITAL PROJECTS AT HARBOR FACILITIES STATEWIDE.			
		DESIGN		750	
		TOTAL FUNDING	TRN	750B	B
54.	I07	ENVIRONMENTAL REMEDIATION OF COMMERCIAL HARBOR FACILITIES, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR STUDIES AND ENVIRONMENTAL REMEDIATION MEASURES AT COMMERCIAL HARBOR FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		250	200
		DESIGN		300	400
		CONSTRUCTION		700	1,400
		TOTAL FUNDING	TRN	1,250B	2,000B
55.	I08	REPLACEMENT OF TIMBER FENDERS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE SYSTEMS AT COMMERCIAL HARBORS STATEWIDE.			
		DESIGN		150	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		CONSTRUCTION			2,000
		TOTAL FUNDING	TRN	150 B	2,000 B
56.	I13	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION PROJECTS AT HARBOR FACILITIES.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	TRN	1,000 B	B
56.01.	I20	HMP CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION OF HARBOR MODERNIZATION PLAN PROJECTS AT HARBOR FACILITIES STATEWIDE.			
		CONSTRUCTION			2,400
		TOTAL FUNDING	TRN	E	2,400 E
56.02.	I21	HMP HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT HARBOR MODERNIZATION PLAN PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF HARBOR MODERNIZATION PLAN CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS			1,735
		TOTAL FUNDING	TRN	E	1,735 E
56.03.	I03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			50
		CONSTRUCTION			200
		TOTAL FUNDING	TRN	B	250 B
56.04.	I15	SECURITY IMPROVEMENTS AT COMMERCIAL HARBORS, STATEWIDE			
		DESIGN AND CONSTRUCTION OF SECURITY SYSTEM IMPROVEMENTS AT COMMERCIAL HARBOR FACILITIES, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			100
		CONSTRUCTION			751
		TOTAL FUNDING	TRN	B	850 B
			TRN	N	1 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
56.05.	I19	BOLLARD IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR BOLLARD IMPROVEMENTS, STATEWIDE.			
		DESIGN			100
		CONSTRUCTION			400
		TOTAL FUNDING	TRN	B	500B
<b>TRN501 - OAHU HIGHWAYS</b>					
57.	S239	FREEWAY MANAGEMENT SYSTEM, OAHU			
		DESIGN FOR A FREEWAY MANAGEMENT SYSTEM, INCLUDING INTELLIGENT TRANSPORTATION SYSTEMS TECHNOLOGIES AND INTERAGENCY COORDINATION TO MONITOR AND MANAGE TRAFFIC OPERATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		750	
		TOTAL FUNDING	TRN	150E	E
			TRN	600N	N
58.	S246	INTERSTATE ROUTE H-1, WESTBOUND AFTERNOON (PM) CONTRAFLOW, OAHU			
		DESIGN FOR A PM CONTRAFLOW LANE ON INTERSTATE ROUTE H-1 FROM THE VICINITY OF RADFORD DRIVE TO THE VICINITY OF WAIKELE.			
		DESIGN		5,000	
		TOTAL FUNDING	TRN	5,000E	E
59.	S257	CASTLE HILLS ACCESS ROAD, DRAINAGE IMPROVEMENTS, OAHU			
		CONSTRUCTION FOR STORM RETENTION STRUCTURES AND EROSION CONTROLS TO REPAIR STORM DAMAGE AND EROSION, AND CONSTRUCTING CONCRETE SIDEWALKS, WHEELCHAIR RAMPS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		5,000	
		TOTAL FUNDING	TRN	1,000E	E
			TRN	4,000N	N
60.	S270	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS FACILITIES, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		LANES, AND OTHER IMPROVEMENTS FOR MORE EFFICIENT TRAFFIC FLOW.			
		PLANS		200	
		DESIGN		200	200
		CONSTRUCTION		1,000	1,000
		TOTAL FUNDING	TRN	1,400E	1,200E
61.	S273	KAMEHAMEHA HIGHWAY, INTERSECTION IMPROVEMENTS AT KUILIMA DRIVE, OAHU			
		LAND ACQUISITION FOR A LEFT TURN LANE ON KAMEHAMEHA HIGHWAY INTO KUILIMA DRIVE, REPLACING O'IO STREAM BRIDGE, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		350	
		TOTAL FUNDING	TRN	350X	X
62.	S276	KALANIANAOLE HIGHWAY IMPROVEMENTS, RETAINING WALL AT MAKAPUU, OAHU			
		CONSTRUCTION FOR CONSTRUCTING AND/OR REPAIRING A RETAINING WALL ALONG KALANIANAOLE HIGHWAY IN THE VICINITY OF MAKAPUU POINT, INCLUDING SUBSURFACE INVESTIGATION AND SLOPE PROTECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		8,000	
		TOTAL FUNDING	TRN	1,600E	E
			TRN	6,400N	N
63.	S299	KAMEHAMEHA HIGHWAY, NORTH KAHANA STREAM BRIDGE REPLACEMENT, OAHU			
		CONSTRUCTION FOR REPLACEMENT OF NORTH KAHANA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		5,000	
		TOTAL FUNDING	TRN	1,000E	E
			TRN	4,000N	N
64.	S308	KAMEHAMEHA HIGHWAY IMPROVEMENTS, WAIPAHU STREET TO KA UKA BOULEVARD, OAHU			
		LAND ACQUISITION AND CONSTRUCTION FOR TRAFFIC OPERATIONAL AND OTHER IMPROVEMENTS INCLUDING SIDEWALK, BIKEWAY, HIGHWAY LIGHTING, DRAINAGE, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		150	
		CONSTRUCTION			5,000
		TOTAL FUNDING	TRN	E	1,000E
			TRN	N	4,000N
			TRN	150X	X



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
65.	S310	FORT BARRETTE ROAD WIDENING, FARRINGTON HIGHWAY TO BARBERS POINT GATE, OAHU			
		LAND ACQUISITION AND CONSTRUCTION FOR WIDENING THE EXISTING ROADWAY TO FOUR LANES INCLUDING RIGHT AND LEFT TURNING LANES, SIDEWALKS, BIKEWAYS, HIGHWAY LIGHTING, DRAINAGE IMPROVEMENTS, TRAFFIC SIGNALS, LANDSCAPING, AND OTHER IMPROVEMENTS. (SPECIAL FUNDS FROM HIGHWAYS DEVELOPMENT SPECIAL FUNDS) THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		200	
		CONSTRUCTION			20,000
		TOTAL FUNDING	TRN	B	5,400B
			TRN	E	600E
			TRN	N	14,000N
			TRN	200X	X
66.	S327	DRYING BED FACILITIES, OAHU			
		CONSTRUCTION OF DRYING BED FACILITIES FOR THE PROCESSING AND DISPOSAL OF HIGHWAY DEBRIS COLLECTED BY MAINTENANCE OPERATIONS.			
		CONSTRUCTION		6,000	
		TOTAL FUNDING	TRN	6,000E	E
67.	S328	KAMEHAMEHA HIGHWAY, REHABILITATION OF MAKAAU STREAM BRIDGE, OAHU			
		LAND ACQUISITION FOR THE REHABILITATION OF MAKAAU STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			225
		TOTAL FUNDING	TRN	E	45E
			TRN	N	180N
68.	S330	KAMEHAMEHA HIGHWAY, REHABILITATION OF KAWAIILOA STREAM BRIDGE, OAHU			
		LAND ACQUISITION FOR THE REHABILITATION OF KAWAIILOA STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			475
		TOTAL FUNDING	TRN	E	95E
			TRN	N	380N
69.	S333	ENVIRONMENTAL REMEDIATION OF HIGHWAY FACILITIES, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR ENVIRONMENTAL REMEDIATION MEASURES ON STATE HIGHWAYS AND FACILITIES.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		PLANS		248	248
		DESIGN		1	1
		CONSTRUCTION		1	1
		TOTAL FUNDING	TRN	250B	250B
70.	S334	VINEYARD BOULEVARD IMPROVEMENTS AT LUSITANA ST., VICINITY OF QUEEN'S MEDICAL CENTER, OAHU			
		DESIGN AND CONSTRUCTION OF A RIGHT TURN LANE FROM LUSITANA STREET ONTO VINEYARD BOULEVARD TO PROVIDE EASTBOUND FREEWAY ACCESS FROM THE QUEEN'S MEDICAL CENTER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		25	
		CONSTRUCTION		9,975	
		TOTAL FUNDING	TRN	1N	N
			TRN	9,999R	R
71.	S337	FARRINGTON HIGHWAY, REHABILITATION OF KAUPUNI STREAM BRIDGE, OAHU			
		DESIGN FOR THE REHABILITATION OF KAUPUNI STREAM BRIDGE TO WIDEN THE STRUCTURE AND/OR LENGTHENING IF REQUIRED, INCLUDING UPGRADE OF BRIDGE RAILINGS AND APPROACHES, CONSTRUCTION OF A DETOUR ROAD, AND INSTALLATION OF OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,200	
		TOTAL FUNDING	TRN	240E	E
			TRN	960N	N
72.	S338	EAST-WEST COLLECTOR ROAD, KAPOLEI, OAHU			
		DESIGN AND CONSTRUCTION OF A FOUR-LANE COLLECTOR ROAD SOUTH OF FARRINGTON HIGHWAY IN THE VICINITY OF THE UNIVERSITY OF HAWAII WEST OAHU CAMPUS IN KAPOLEI, OAHU. INTERDEPARTMENTAL TRANSFER FUNDS FROM THE DEPARTMENT OF HAWAIIAN HOME LANDS.			
		DESIGN		1,725	
		CONSTRUCTION		15,500	
		TOTAL FUNDING	TRN	17,225U	U
73.	SP9101	NORTH/SOUTH ROAD, KAPOLEI PARKWAY TO VICINITY OF INTERSTATE ROUTE H-1, OAHU			
		CONSTRUCTION FOR NORTH/SOUTH ROAD FROM KAPOLEI PARKWAY TO VICINITY OF THE H-1 FREEWAY. IMPROVEMENTS INCLUDE A MULTI-LANE HIGHWAY AND AN INTERCHANGE AT THE H-1 FREEWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		CONSTRUCTION		55,000	
		TOTAL FUNDING	TRN	11,000E	E
			TRN	44,000N	N
74.	SP0701	KAMEHAMEHA HIGHWAY, REALIGNMENT AT LANIAKEA BEACH ROAD, OAHU			
		PLANS FOR THE REALIGNMENT OF KAMEHAMEHA HIGHWAY ALONG THE AREAS OF LANIAKEA BEACH AND CHUN'S REEF.			
		PLANS		1,200	
		TOTAL FUNDING	TRN	1,200C	C
75.	SP0303	KAHEKILI HIGHWAY, OAHU			
		PLANS AND DESIGN FOR HIGHWAY WIDENING AND OTHER IMPROVEMENTS TO ACCOMMODATE A CONTRAFLOW LANE FROM THE VICINITY OF HAIKU ROAD TO HUI IWA STREET. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1,000	1
		DESIGN			1,000
		TOTAL FUNDING	TRN	1,000E	1,000E
			TRN	N	1N
75.01.	S326	KALANIANAOLE HIGHWAY MEDIAN IMPROVEMENTS, VICINITY OF OLOMANA GOLF COURSE, OAHU			
		CONSTRUCTION FOR MEDIAN IMPROVEMENTS, WIDENING OF THE ROADWAY, INSTALLING SIGNS, MARKINGS, AND OTHER INCIDENTAL IMPROVEMENTS IN THE VICINITY OF OLOMANA GOLF COURSE.			
		CONSTRUCTION			3,000
		TOTAL FUNDING	TRN	E	3,000E
75.02.	S339	INTERSTATE ROUTE H-1, SCHOOL ST DRAINAGE IMPROVEMENTS AND ON-RAMP RETAINING WALL REPLACEMENT, OAHU			
		CONSTRUCTION FOR REPLACING THE EXISTING SCHOOL STREET ON-RAMP RETAINING WALL AND PROVIDING SLOPE STABILIZATION, INCLUDING THE INSTALLATION OF DRAINAGE FACILITIES, ALONG SCHOOL STREET. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			9,000
		TOTAL FUNDING	TRN	E	8,999E
			TRN	N	1N

TRN511 - HAWAII HIGHWAYS

76. T007 HAWAII BELT ROAD, MUD LANE TO THE KAMUELA RACE TRACK, HAWAII

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		DESIGN FOR WIDENING AND/OR REALIGNING OF HIGHWAY BETWEEN MUD LANE AND KAMUELA RACE TRACK IN SOUTH KOHALA, HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,750	
		TOTAL FUNDING	TRN	350E	E
			TRN	1,400N	N
77.	T077	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, HAWAII			
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE END POSTS AND CRASH ATTENUATOR, AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		100	100
		CONSTRUCTION		1,400	1,400
		TOTAL FUNDING	TRN	300E	300E
			TRN	1,200N	1,200N
78.	T080	KAWAIHAE ROAD, WAIAKA STREAM BRIDGE REPLACEMENT AND REALIGNMENT, HAWAII			
		DESIGN FOR REPLACING THE EXISTING WAIAKA STREAM BRIDGE, REALIGNING THE BRIDGE APPROACHES, RECONSTRUCTING THE ROUTE 19/ROUTE 250 INTERSECTION, AND INSTALLING SAFETY IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,000	
		TOTAL FUNDING	TRN	200E	E
			TRN	800N	N
79.	T082	QUEEN KAAHUMANU HIGHWAY WIDENING, HAWAII			
		CONSTRUCTION FOR THE WIDENING OF QUEEN KAAHUMANU HIGHWAY TO A FOUR-LANE DIVIDED HIGHWAY FROM VICINITY OF KEALAKEHE PARKWAY TO THE VICINITY OF KEAHOLE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		35,000	
		TOTAL FUNDING	TRN	7,000E	E
			TRN	28,000N	N
80.	T085	KEALAKEHE PARKWAY EXTENSION, VICINITY OF KEANALEHU DRIVE TO KEALAKAA STREET, HAWAII			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		LAND ACQUISITION AND CONSTRUCTION FOR THE EXTENSION OF KEALAKEHE PARKWAY FROM KEANALEHU DRIVE TO KEALAKAA STREET. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		1,000	
		CONSTRUCTION			5,000
		TOTAL FUNDING	TRN	200E	1,000E
			TRN	800N	4,000N
81.	T118	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.			
		PLANS		100	
		DESIGN		100	150
		CONSTRUCTION			950
		TOTAL FUNDING	TRN	200E	1,100E
82.	T125	AKONI PULE HIGHWAY, REALIGNMENT AND WIDENING AT AAMAKOA GULCH, HAWAII			
		LAND ACQUISITION FOR REALIGNMENT AND WIDENING OF AKONI PULE HIGHWAY ON THE POLOLU VALLEY SIDE OF AAMAKOA GULCH, INCLUDING INSTALLING GUARDRAILS AND SIGNS.			
		LAND		250	
		TOTAL FUNDING	TRN	250E	E
83.	T132	VOLCANO ROAD INTERSECTION IMPROVEMENTS AT KULANI ROAD, HAWAII			
		CONSTRUCTION FOR LEFT TURN LANES AT THE KULANI ROAD INTERSECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			3,000
		TOTAL FUNDING	TRN	E	600E
			TRN	N	2,400N
84.	T133	VOLCANO ROAD DRAINAGE IMPROVEMENTS, KULANI ROAD TO MOUNTAIN VIEW SCHOOL, HAWAII			
		CONSTRUCTION FOR DRAINAGE IMPROVEMENTS, INCLUDING INSTALLING A CONCRETE-LINED DITCH WITH GRATING, AN ASPHALT-LINED DITCH, GUARDRAILS, CULVERTS, AND FENCING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			2,500
		TOTAL FUNDING	TRN	E	500E
			TRN	N	2,000N
85.	T135	MAMALAHOA HIGHWAY DRAINAGE IMPROVEMENTS AT KAWA, HAWAII			
		LAND ACQUISITION AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS, INCLUDING THE INSTALLATION OF DRAINAGE BOX CULVERTS AND RAISING OF THE ROADWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		200	
		CONSTRUCTION		5,000	
		TOTAL FUNDING	TRN	1,000E	E
			TRN	4,000N	N
			TRN	200X	X
86.	T136	HAWAII BELT ROAD DRAINAGE IMPROVEMENTS, VICINITY OF HAKALAU BRIDGE, HAWAII			
		LAND ACQUISITION AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS, INCLUDING INSTALLING A DRAINAGE SPILLWAY AND BOX CULVERTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		75	
		CONSTRUCTION		2,000	
		TOTAL FUNDING	TRN	400E	E
			TRN	1,600N	N
			TRN	75X	X
87.	T138	KANOELEHUA AVENUE, INBOUND WIDENING, KAMEHAMEHA AVENUE TO PUAINAKO STREET, HAWAII			
		DESIGN FOR THE WIDENING OF KANOELEHUA AVENUE NORTHBOUND FROM PUAINAKO STREET TO KAMEHAMEHA AVENUE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		850	
		TOTAL FUNDING	TRN	170E	E
			TRN	680N	N
88.	T139	SADDLE ROAD MAINTENANCE BASEYARD, VICINITY OF MAUNA KEA STATE PARK, HAWAII			
		DESIGN FOR A ROAD MAINTENANCE FACILITY THAT INCLUDES MAINTENANCE AND OFFICE STRUCTURES, SITE IMPROVEMENTS, LAND ACQUISITION, STORAGE FACILITIES, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		600	
		TOTAL FUNDING	TRN	600E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
89.	P70019	HAWAII BELT ROAD (ROUTE 19) AND PAPAIKOU MILL ROAD INTERSECTION, HAWAII			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF TRAFFIC SIGNAL SYSTEM AT HAWAII BELT ROAD (ROUTE 19) AND PAPAIKOU MILL ROAD INTERSECTION.			
		DESIGN		40	
		CONSTRUCTION		360	
		TOTAL FUNDING	TRN	400B	B
90.	T140	HAWAII BELT ROAD, REPLACEMENT OF KAWAILII BRIDGE, HAWAII			
		CONSTRUCTION FOR THE REPLACEMENT OF THE BRIDGE STRUCTURE ON THE HAWAII BELT ROAD INCLUDING IMPROVEMENTS TO THE ROADWAY APPROACHES, SEISMIC UPGRADES, UTILITIES RELOCATION, AND REMOVAL OF A TEMPORARY DETOUR ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		6,000	
		TOTAL FUNDING	TRN	1,200E	E
			TRN	4,800N	N
90.01.	T011	PUAINAKO STREET EXTENSION, KOMOHANA STREET TO COUNTRY CLUB ROAD, HAWAII			
		LAND ACQUISITION FOR A NEW TWO-LANE ROADWAY FROM KOMOHANA STREET TO THE INTERSECTION OF COUNTRY CLUB ROAD AND KAUMANA DRIVE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			1,500
		TOTAL FUNDING	TRN	E	300E
			TRN	N	1,200N
90.02.		KEAAU-PAHOA AND VOLCANO HIGHWAY, INTERSECTION IMPROVEMENTS, HAWAII			
		DESIGN AND CONSTRUCTION OF INTERSECTION IMPROVEMENTS FOR NEW REGIONAL LIBRARY AND COUNTY CIVIC CENTER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			1
		CONSTRUCTION			499
		TOTAL FUNDING	TRN	E	499E
			TRN	N	1N

TRN531 - MAUI HIGHWAYS

91.	V048	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MAUI			
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPPOSTS AND CRASH ATTENUATORS, AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		250	
		CONSTRUCTION			1,000
		TOTAL FUNDING	TRN	50E	200E
			TRN	200N	800N
92.	V051	HONOAPIILANI HIGHWAY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO LAUNIUPOKO, MAUI			
		LAND ACQUISITION AND CONSTRUCTION FOR A NEW ALIGNMENT OF HONOAPIILANI HIGHWAY FROM LAHAINALUNA ROAD TO THE VICINITY OF LAUNIUPOKO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		4,000	
		CONSTRUCTION			42,000
		TOTAL FUNDING	TRN	800E	8,400E
			TRN	3,200N	33,600N
93.	V075	HANA HIGHWAY ROCKFALL MITIGATION, HUELO TO HANA, MAUI			
		DESIGN TO MITIGATE ROCKFALLS AND POTENTIAL LANDSLIDE AREAS ALONG THE SLOPES OF ROUTE 360 HANA HIGHWAY FROM THE VICINITY OF MILE POST 11.3 TO MILE POST 12.8.			
		DESIGN		400	
		TOTAL FUNDING	TRN	400E	E
94.	V083	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, MAUI			
		PLANS, DESIGN, AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.			
		PLANS		100	
		DESIGN		100	100
		CONSTRUCTION			800
		TOTAL FUNDING	TRN	200E	900E
95.	V084	HANA HIGHWAY IMPROVEMENTS, HUELO TO HANA, MAUI			



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
				M	M
				O	O
				F	F
		DESIGN FOR IMPROVING, UPGRADING, AND/OR REPAIRING ROADWAYS, BRIDGES, WALLS, DRAINAGE STRUCTURES, GUARDRAILS, AND OTHER FACILITIES ON ROUTE 360 HANA HIGHWAY.			
		DESIGN			275
		TOTAL FUNDING	TRN	E	275E
96.	V093	WAIIEHU BEACH ROAD, REHABILITATION OF IAO STREAM BRIDGE, MAUI			
		CONSTRUCTION FOR REHABILITATION OF A CONCRETE TEE-BEAM BRIDGE ON WAIIEHU BEACH ROAD IN THE VICINITY OF WAILUKU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			6,500
		TOTAL FUNDING	TRN	E	1,300E
			TRN	N	5,200N
97.	V095	HALEAKALA HIGHWAY WIDENING AT MILEPOST 0.8, MAUI			
		LAND ACQUISITION AND DESIGN FOR WIDENING THE HIGHWAY FROM ONE LANE TO TWO LANES, EXTENDING A BOX CULVERT, AND CONSTRUCTING HEADWALLS AND WING WALLS.			
		LAND			40
		DESIGN		150	
		TOTAL FUNDING	TRN	150E	40E
98.	V096	HANA HIGHWAY WIDENING, KAAHUMANU AVENUE TO HALEAKALA HIGHWAY, MAUI			
		LAND ACQUISITION AND DESIGN FOR THE WIDENING OF HANA HIGHWAY FROM KAAHUMANU AVENUE TO HALEAKALA HIGHWAY, FROM FOUR TO SIX LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			100
		DESIGN		1,200	
		TOTAL FUNDING	TRN	240E	20E
			TRN	960N	80N
99.	V097	PUUNENE AVENUE WIDENING, WAKEA AVENUE TO KUIHELANI HIGHWAY, MAUI			
		LAND ACQUISITION AND DESIGN FOR THE WIDENING OF PUUNENE AVENUE FROM WAKEA AVENUE TO KUIHELANI HIGHWAY FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			25
		DESIGN		500	
		TOTAL FUNDING	TRN	100E	5E
			TRN	400N	20N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
100.	VP0104	HONOAPIILANI HIGHWAY WIDENING, LAHAINALUNA ROAD TO SOUTH OF FRONT STREET, MAUI			
		CONSTRUCTION FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM TWO TO FOUR LANES FROM THE VICINITY OF LAHAINALUNA ROAD TO AHOLO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		6,000	
		TOTAL FUNDING	TRN	1,200E	E
			TRN	4,800N	N
100.01.	V068	HONOAPIILANI HIGHWAY WIDENING, KAAPALI PARKWAY TO LOWER HONOAPIILANI ROAD, MAUI			
		CONSTRUCTION FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM TWO TO FOUR LANES BETWEEN KAAPALI PARKWAY TO LOWER HONOAPIILANI ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			2,000
		TOTAL FUNDING	TRN	E	400E
			TRN	N	1,600N
<b>TRN541 - MOLOKAI HIGHWAYS</b>					
101.	W011	KAMEHAMEHA V HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, MOLOKAI			
		CONSTRUCTION FOR REPLACEMENT OF KAWELA STREAM BRIDGE TO INCLUDE SIDEWALKS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		3,500	
		TOTAL FUNDING	TRN	700E	E
			TRN	2,800N	N
102.	W012	MAUNALOA HIGHWAY SLOPE STABILIZATION AT MP 13 AND MP 14.3, MOLOKAI			
		CONSTRUCTION FOR THE STABILIZATION OF THE EMBANKMENT AT MILE POST 13 AND MILE POST 14.3 ON MAUNALOA HIGHWAY.			
		CONSTRUCTION		1,750	
		TOTAL FUNDING	TRN	1,750E	E
103.	W014	KAMEHAMEHA V HIGHWAY, DRAINAGE IMPROVEMENTS, VICINITY OF MILE POST 12.5, MOLOKAI			
		CONSTRUCTION TO UPGRADE THE EXISTING CULVERT, OTHER DRAINAGE FACILITIES, SHOULDERS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 12.5.			
		CONSTRUCTION		450	
		TOTAL FUNDING	TRN	450E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
<b>TRN561 - KAUAI HIGHWAYS</b>					
104.	X051	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, KAUAI			
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPOSTS AND CRASH ATTENUATORS; AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		100	
		CONSTRUCTION		900	
		TOTAL FUNDING	TRN	200E	E
			TRN	800N	N
105.	X100	KUHIO HIGHWAY, RETAINING WALLS AT LUMAHAI AND WAINIHA, KAUAI			
		LAND ACQUISITION AND CONSTRUCTION FOR RETAINING WALLS TO PREVENT SLIPPAGE AND EROSION OF THE ROADWAY.			
		LAND		100	
		CONSTRUCTION			4,000
		TOTAL FUNDING	TRN	100E	4,000E
106.	X112	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, KAUAI			
		PLANS, DESIGN, AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.			
		PLANS		100	
		DESIGN		100	200
		CONSTRUCTION		1,000	800
		TOTAL FUNDING	TRN	1,200E	1,000E
107.	X120	KAUMUALII HIGHWAY, KUHIO HIGHWAY, AND KUAMOO ROAD RETAINING WALLS, KAUAI			
		CONSTRUCTION FOR CONSTRUCTING AND/OR RECONSTRUCTING RETAINING WALLS AND OTHER APPURTENANT IMPROVEMENTS AT VARIOUS LOCATIONS.			
		CONSTRUCTION		1,500	
		TOTAL FUNDING	TRN	1,500E	E
108.	X122	KUHIO HIGHWAY, ROUTE 560, SLOPE PROTECTION, HANAIEI HILL, KAUAI			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		LAND ACQUISITION FOR THE CONSTRUCTION OF SLOPE STABILIZATION IMPROVEMENTS AND PROTECTION MEASURES.			
		LAND		100	
		TOTAL FUNDING	TRN	100E	E
109.	X123	WAIMEA CANYON DRIVE/KOKEE ROAD IMPROVEMENTS, MILE POST 0 TO MILE POST 14, KAUAI			
		CONSTRUCTION FOR PAVED SHOULDERS, INSTALLING GUARDRAILS, PAVEMENT MARKINGS AND SIGNS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 0 TO MILE POST 14.			
		CONSTRUCTION		2,000	
		TOTAL FUNDING	TRN	2,000E	E
110.	X130	KUHIO HIGHWAY, MAILIHUNA ROAD INTERS. IMP. AND KAPAA STREAM BRIDGE REHABILITATION, KAUAI			
		DESIGN FOR THE CONSTRUCTION OF INTERSECTION SAFETY IMPROVEMENTS AND REHABILITATION OF KAPAA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			1,000
		TOTAL FUNDING	TRN	E	200E
			TRN	N	800N
111.	X007	KUHIO HIGHWAY IMPROVEMENTS, HANAMAULU TO KAPAA, KAUAI			
		CONSTRUCTION FOR A NEW KAPAA BYPASS AND/OR WIDEN SECTIONS OF KUHIO HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		8,000	16,000
		TOTAL FUNDING	TRN	1,600E	3,200E
			TRN	6,400N	12,800N
111.01.	X068	KUHIO HIGHWAY, WAIKAEA BRIDGE WIDENING, KAUAI			
		CONSTRUCTION FOR WIDENING WAIKAEA BRIDGE AND ITS APPROACHES FROM 3 TO 4 LANES; CONSTRUCTING PAVED SHOULDERS AND LEFT TURN STORAGE LANES FOR OHIA STREET AND ULU STREET INTERSECTIONS AND THE PONO KAI SUBDIVISION ENTRANCE.			
		CONSTRUCTION			1,500
		TOTAL FUNDING	TRN	E	1,500E

TRN595 - HIGHWAYS ADMINISTRATION

112. X091 PEDESTRIAN FACILITIES AND ADA COMPLIANCE AT VARIOUS LOCATIONS, STATEWIDE

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		CONSTRUCTION FOR CONSTRUCTING PEDESTRIAN FACILITIES AND INSTALLING AND/OR UPGRADING CURB RAMPS AND BUS STOPS ON STATE HIGHWAYS AND UPGRADING THE HIGHWAYS DIVISION BUILDING FACILITIES TO MEET COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			1,500
		TOTAL FUNDING	TRN	E	300E
			TRN	N	1,200N
113.	X096	CLOSE-OUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE			
		LAND ACQUISITION FOR COMPLETION OF ACQUISITION OF OUTSTANDING RIGHT-OF-WAY PARCELS ON PREVIOUSLY CONSTRUCTED PROJECTS OR PROJECTS WITH NECESSARY MITIGATIVE RESPONSES. ALSO, TO PROVIDE FOR THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.			
		LAND		300	300
		TOTAL FUNDING	TRN	300E	300E
114.	X097	MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS, AND CULVERTS AT VARIOUS LOCATIONS.			
		DESIGN		100	100
		CONSTRUCTION		1,250	1,250
		TOTAL FUNDING	TRN	1,350E	1,350E
115.	X098	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		250	250
		CONSTRUCTION		2,000	2,000
		TOTAL FUNDING	TRN	450E	450E
			TRN	1,800N	1,800N
116.	X099	HIGHWAY PLANNING, STATEWIDE			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		PLANS FOR ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH, ADVANCE PLANNING AND SCOPING OF FEDERAL AID AND NON FEDERAL AID HIGHWAY PROJECTS AND PROGRAMS, AND STUDIES REQUIRED BY THE FEDERAL HIGHWAYS ADMINISTRATION (FHWA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		4,375	4,375
		TOTAL FUNDING	TRN	875E	875E
			TRN	3,500N	3,500N
117.	X221	TRAFFIC SIGNAL MODERNIZATION AT VARIOUS LOCATIONS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR REPLACING EXISTING TRAFFIC SIGNAL SYSTEMS; PROVIDING INTERCONNECTION OF SIGNALIZED INTERSECTIONS; UPGRADING EXISTING TRAFFIC SIGNAL SYSTEMS TO MEET CURRENT AMERICANS WITH DISABILITIES (ADA) STANDARDS; AND INSTALLING CLOSE CIRCUIT TELEVISION FOR THE FREEWAY MANAGEMENT SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		300	300
		CONSTRUCTION		1,200	1,200
		TOTAL FUNDING	TRN	300E	300E
			TRN	1,200N	1,200N
118.	X222	SEISMIC RETROFIT OF VARIOUS BRIDGES, STATEWIDE			
		CONSTRUCTION FOR SEISMIC RETROFIT IMPROVEMENTS FOR VARIOUS BRIDGES STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			7,500
		TOTAL FUNDING	TRN	E	1,500E
			TRN	N	6,000N
119.	X224	HIGHWAY SHORELINE PROTECTION, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR SHORELINE PROTECTION IMPROVEMENTS OF EXISTING STATE HIGHWAY FACILITIES, INCLUDING SHORELINE PROTECTION STRUCTURES, RELOCATION AND REALIGNMENT OF THE HIGHWAY AND BEACH FILL/NOURISHMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		500	
		CONSTRUCTION			6,500
		TOTAL FUNDING	TRN	100E	1,300E
			TRN	400N	5,200N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
120.	X225	HIGHWAYS DIVISION CAPITAL IMPROVEMENTS PROGRAM PROJECTS STAFF COSTS, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM PROJECTS RELATED POSITIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		1	1
		CONSTRUCTION		23,997	23,997
		TOTAL FUNDING	TRN	18,000 B	18,000 B
			TRN	6,000 N	6,000 N
121.	X226	CLOSEOUT OF HIGHWAY CONSTRUCTION PROJECTS, STATEWIDE			
		CONSTRUCTION FOR COMPLETION OF OUTSTANDING CONSTRUCTION PROJECTS FOR POSTING OF AS-BUILT PLANS, OUTSTANDING UTILITY BILLINGS, AND PAYMENTS TO OTHERS FOR PROJECT RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		200	200
		TOTAL FUNDING	TRN	199 E	199 E
			TRN	1 N	1 N
122.	X227	ROCKFALL PROTECTION/SLOPE STABILIZATION AT VARIOUS LOCATIONS, STATEWIDE			
		LAND ACQUISITION FOR ROCKFALL/SLOPE PROTECTION AND SLOPE STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			1,000
		TOTAL FUNDING	TRN	E	200 E
			TRN	N	800 N
123.	X230	BIKEWAY IMPROVEMENTS AT VARIOUS LOCATIONS, STATEWIDE			
		CONSTRUCTION TO PROVIDE AND IMPROVE BICYCLE FACILITIES ON STATE HIGHWAYS. THE FEDERAL LEGISLATION TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA-21) PROVIDES FOR IMPROVING CONDITIONS AND SAFETY FOR THE BICYCLING MODE OF TRAVEL. THIS PROJECT IS DEEMED NECESSARY			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			1,000
		TOTAL FUNDING	TRN	E	200E
			TRN	N	800N
124.	X231	HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY RENOVATION, STATEWIDE			
		CONSTRUCTION FOR THE RENOVATION AND IMPROVEMENTS TO THE HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY.			
		CONSTRUCTION		2,500	
		TOTAL FUNDING	TRN	2,500E	E
125.	X235	MOTOR CARRIER SAFETY AND HIGHWAY SAFETY OFFICE FACILITY, STATEWIDE			
		DESIGN AND CONSTRUCTION TO RENOVATE AND REFURBISH EXISTING BUILDING STRUCTURES AND INSTALL MISCELLANEOUS SITE IMPROVEMENTS UNDER THE WAIMALU VIADUCT.			
		DESIGN		75	
		CONSTRUCTION		500	
		TOTAL FUNDING	TRN	575B	B
126.	X236	SUSTAINABLE HIGHWAY LANDSCAPE MASTER PLAN, STATEWIDE			
		PLANS TO DEVELOP A SUSTAINABLE LANDSCAPE MASTER PLAN. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		751	
		TOTAL FUNDING	TRN	750E	E
			TRN	1N	N

D. ENVIRONMENTAL PROTECTION

HTH840 - ENVIRONMENTAL MANAGEMENT

1.	840801	WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE			
		CONSTRUCTION FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS APPROPRIATED TO BE TRANSFERRED TO THE WATER POLLUTION CONTROL REVOLVING FUND ESTABLISHED PURSUANT TO CHAPTER 342-D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		5,969	9,928
		TOTAL FUNDING	HTH	995 C	1,655 C
			HTH	4,974N	8,273N
2.	840802	SAFE DRINKING WATER REVOLVING FUND, STATEWIDE			



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS TO COMPLY WITH THE SAFE DRINKING WATER ACT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		10,024	10,024
		TOTAL FUNDING	HTH	1,671 C	1,671 C
			HTH	8,353 N	8,353 N

LNR402 - NATIVE RESOURCES AND FIRE PROTECTION PROGRAM

3.	D00A	DIVISION OF FORESTRY AND WILDLIFE (DOFAW) BASEYARD IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR BASEYARD IMPROVEMENTS ON OAHU AND HILO.			
		PLANS		40	
		DESIGN		110	
		CONSTRUCTION		340	460
		EQUIPMENT		10	40
		TOTAL FUNDING	LNR	500 C	500 C
3.01.	D00C	KAWAI NUI MARSH HABITAT RESTORATION PROJECT, OAHU			
		CONSTRUCTION FOR HABITAT RESTORATION AT KAWAI NUI MARSH, OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			500
		TOTAL FUNDING	LNR	C	500 C
3.02.		KAWAI NUI MARSH, OAHU			
		PLANS AND DESIGN FOR AN ENGINEERING STUDY AND ENVIRONMENTAL ASSESSMENT TO RESTORE WATER FLOW FROM KAWAI NUI MARSH TO KAWAI NUI STREAM.			
		PLANS			100
		DESIGN			150
		TOTAL FUNDING	LNR	C	250 C

LNR405 - CONSERVATION AND RESOURCES ENFORCEMENT

3.03.	B08B	DIVISION OF CONSERVATION AND RESOURCE ENFORCEMENT OFFICE, HONOKOHAU HARBOR, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION OF WASTEWATER TREATMENT SYSTEM IMPROVEMENTS, OFFICE AND FACILITY IMPROVEMENTS AND RELATED WORK.			
		PLANS			10
		DESIGN			30
		CONSTRUCTION			60
		TOTAL FUNDING	LNR	C	100 C

LNR407 - NATURAL AREA RESERVES AND WATERSHED MANAGEMENT

3.04.	D00E	AHIHI-KINAU NATURAL RESERVE, MAUI			
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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO PUBLIC USE FACILITIES.			
		DESIGN			20
		CONSTRUCTION			80
		TOTAL FUNDING	LNR	B	100B
<b>LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT</b>					
4.	G01	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.			
		PLANS		2,530	2,688
		TOTAL FUNDING	LNR	2,530 C	2,688 C
5.	J00	ADA PUBLIC ACCESSIBILITY AT DEPARTMENT OF LAND AND NATURAL RESOURCES (DLNR) FACILITIES, STATEWIDE			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO PROVIDE PUBLIC ACCESSIBILITY AT DLNR FACILITIES.			
		DESIGN		520	
		CONSTRUCTION		2,130	2,300
		EQUIPMENT		50	
		TOTAL FUNDING	LNR	2,700 C	2,300 C
<b>E. HEALTH</b>					
<b>HTH100 - COMMUNICABLE DISEASE SERVICES</b>					
1.	100801	KALAUPAPA SETTLEMENT, HARBOR IMPROVEMENTS, MOLOKAI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO KALAUPAPA HARBOR AND SURROUNDING ELEMENTS.			
		DESIGN		1	
		CONSTRUCTION		998	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	1,000 C	C
2.	100802	KALAUPAPA SETTLEMENT, VARIOUS IMPROVEMENTS TO THE NURSING FACILITY, MOLOKAI			
		DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO THE NURSING FACILITIES INCLUDING NEW EMERGENCY GENERATOR WITH WIRING, FIRE SAFETY RETROFITS, AND VARIOUS OTHER IMPROVEMENTS.			
		DESIGN		50	
		CONSTRUCTION		460	
		TOTAL FUNDING	AGS	510 C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
<b>HTH560 - FAMILY HEALTH</b>					
2.01.		MOLOKAI GENERAL HOSPITAL, MOLOKAI			
		CONSTRUCTION TO REPLACE THE X-RAY SYSTEM. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION			400
		TOTAL FUNDING	HTH	C	400C
<b>HTH580 - COMMUNITY HEALTH SERVICES</b>					
2.02.		VOLCANO HEALTH COLLABORATIVE, HAWAII			
		LAND ACQUISITION TO ESTABLISH A HEALTH CENTER IN THE GREATER VOLCANO AREA. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		LAND			250
		TOTAL FUNDING	HTH	C	250C
<b>HTH595 - HEALTH RESOURCES ADMINISTRATION</b>					
3.	P70020	WAIANAE COAST COMPREHENSIVE HEALTH CENTER, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE EXPANSION AND RENOVATION OF FACILITIES AT THE WAIANAE COAST COMPREHENSIVE HEALTH CENTER, PHASE II. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			998
		TOTAL FUNDING	HTH	1,000C	C
4.	P60018	KOKUA KALIHI VALLEY, OAHU			
		PLANS AND CONSTRUCTION FOR RENOVATION OF THE P&P BUILDING AND INFRASTRUCTURE IMPROVEMENTS AT KALIHI VALLEY NATURE PARK. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			40
		CONSTRUCTION			2,160
		TOTAL FUNDING	HTH	2,200C	C
5.	P70021	LANAI WOMEN'S CENTER, LANAI			
		PLANS AND CONSTRUCTION FOR THE LANAI COMMUNITY HEALTH CENTER FOR THE LOW INCOME, UNDERSERVED RESIDENTS OF THE ISLAND OF LANAI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		CONSTRUCTION			499
		TOTAL FUNDING	HTH	500C	C
6.	P70022	HOSPICE OF HILO, HAWAII			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		CONSTRUCTION FOR PHASE I OF A MEDICARE CERTIFIED IN-PATIENT HOSPICE FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		1,000	250
		TOTAL FUNDING	HTH	1,000 C	250 C
7.	10013	MOLOKAI GENERAL HOSPITAL, MOLOKAI			
		CONSTRUCTION TO COMPLETE THE EXPANSION AND UPGRADE OF MOLOKAI GENERAL HOSPITAL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		1,700	
		TOTAL FUNDING	HTH	1,700 C	C
8.	P70023	HAMAKUA HEALTH CENTER, INC., HAWAII			
		DESIGN AND CONSTRUCTION FOR EXPANSION OF THE HAMAKUA HEALTH CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		249	
		TOTAL FUNDING	HTH	250 C	C
9.	P70024	SHRINERS HOSPITALS FOR CHILDREN, HONOLULU, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE HOSPITAL FACILITIES. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		249	
		TOTAL FUNDING	HTH	250 C	C
10.	P70025	WAIMANALO HEALTH CENTER, OAHU			
		DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF DENTAL FACILITIES. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		124	
		TOTAL FUNDING	HTH	125 C	C
<b>HTH210 - HAWAII HEALTH SYSTEMS CORPORATION</b>					
11.	295003	HAWAII HEALTH SYSTEMS CORPORATION, CORRECT HEALTH AND SAFETY DEFICIENCIES, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO CORRECT HEALTH AND LIFE SAFETY CODE DEFICIENCIES FOR ALL HAWAII HEALTH SYSTEM CORPORATION FACILITIES.			
		PLANS		1	
		DESIGN		4,000	
		CONSTRUCTION		15,998	
		EQUIPMENT		1	
		TOTAL FUNDING	HTH	20,000 C	C
12.	211000	HILO MEDICAL CENTER, HAWAII			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		DESIGN AND CONSTRUCTION TO EXPAND AND UPGRADE THE EXISTING CARDIOVASCULAR SUITE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		649	
		CONSTRUCTION		1	
		TOTAL FUNDING	HTH	650C	C
13.	242802	LEAHI HOSPITAL MASTER PLAN, OAHU			
		PLANS FOR A MASTER PLAN FOR LEAHI HOSPITAL.			
		PLANS		80	
		TOTAL FUNDING	HTH	80C	C
14.	221915	MAUI MEMORIAL MEDICAL CENTER GENERATORS, MAUI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TWO GENERATORS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		3,089	
		EQUIPMENT		1	
		TOTAL FUNDING	HTH	3,190C	C
14.01.		221914 MAUI MEMORIAL MEDICAL CENTER, DIALYSIS UNIT RENOVATIONS, MAUI			
		DESIGN FOR THE DIALYSIS UNIT RENOVATIONS.			
		DESIGN			348
		TOTAL FUNDING	HTH	C	348C
14.02.		241903 MALUHIA, REPLACE X-RAY SYSTEM, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE THE EXISTING X-RAY SYSTEM.			
		DESIGN			54
		CONSTRUCTION			359
		EQUIPMENT			1
		TOTAL FUNDING	HTH	C	414C
14.03.		223902 KULA HOSPITAL, REPLACE X-RAY SYSTEM, MAUI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE THE X-RAY SYSTEM WITH NEW DIGITAL X-RAY SYSTEM.			
		DESIGN			54
		CONSTRUCTION			359
		EQUIPMENT			1
		TOTAL FUNDING	HTH	C	414C
14.04.		214901 KOHALA HOSPITAL, REPLACE X-RAY SYSTEM, HAWAII			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE THE X-RAY SYSTEM FOR KOHALA HOSPITAL.			
		DESIGN			54
		CONSTRUCTION			359
		EQUIPMENT			1
		TOTAL FUNDING	HTH	C	414C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
14.05.	212903	HALE HO'OLA HAMAKUA, REPLACE X-RAY SYSTEM, HAWAII			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE X-RAY SYSTEM FOR HALE HO'OLA HAMAKUA.			
		DESIGN			54
		CONSTRUCTION			359
		EQUIPMENT			1
		TOTAL FUNDING	HTH	C	414C
14.06.	213906	KAU HOSPITAL, REPLACE X-RAY EQUIPMENT, HAWAII			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE THE X-RAY SYSTEM.			
		DESIGN			54
		CONSTRUCTION			359
		EQUIPMENT			1
		TOTAL FUNDING	HTH	C	414C
14.07.	231902	KAUAI REGION HOSPITALS, KAUAI			
		PLANS FOR KAUAI REGIONAL PLANNING.			
		PLANS			500
		TOTAL FUNDING	HTH	C	500C
14.08.	232901	SAMUEL MAHELONA MEMORIAL HOSPITAL, REPLACE X-RAY SYSTEM, KAUAI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE THE X-RAY SYSTEM.			
		DESIGN			54
		CONSTRUCTION			359
		EQUIPMENT			1
		TOTAL FUNDING	HTH	C	414C
<b>HTH430 - ADULT MENTAL HEALTH - INPATIENT</b>					
15.	430803	HAWAII STATE HOSPITAL, REPAIRS AND IMPROVEMENTS TO VARIOUS BUILDINGS AND SITES, OAHU			
		DESIGN AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS, WHICH MAY INCLUDE REROOFING, STRUCTURAL WORK, AND VARIOUS OTHER IMPROVEMENTS.			
		DESIGN		1	1
		CONSTRUCTION		2,999	2,999
		TOTAL FUNDING	AGS	3,000C	3,000C
16.	P70029	WAIANAE COAST COMMUNITY MENTAL HEALTH CENTER, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR FACILITY IMPROVEMENTS. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		LAND		1	
		DESIGN		1	
		CONSTRUCTION		122	
		TOTAL FUNDING	HTH	125C	C
16.01.		KAHI MOHALA BEHAVIORAL HEALTH, OAHU			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		DESIGN AND CONSTRUCTION TO REPAIR AND REPLACE THE NURSING STATION. PROJECT TO ALSO INCLUDE BATHROOM IMPROVEMENTS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN			1
		CONSTRUCTION			199
		TOTAL FUNDING	HTH	C	200C
<b>HTH440 - ALCOHOL AND DRUG ABUSE</b>					
17.	P70030	THE ALCOHOLIC REHABILITATION SERVICES OF HAWAII, INC., STATEWIDE			
		CONSTRUCTION AND EQUIPMENT FOR PORTABLE OFFICE TRAILERS AND APPURTENANCES FOR HINA MAUKA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		674	
		EQUIPMENT		1	
		TOTAL FUNDING	HTH	675C	C
<b>HTH907 - GENERAL ADMINISTRATION</b>					
18.	907801	VARIOUS IMPROVEMENTS TO DEPARTMENT OF HEALTH FACILITIES, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO DOH FACILITIES STATEWIDE, IMPROVEMENTS MAY INCLUDE REROOFING, RENOVATIONS, AIR CONDITIONING UPGRADES, AND OTHER VARIOUS IMPROVEMENTS.			
		DESIGN		485	2
		CONSTRUCTION		1	4,102
		TOTAL FUNDING	AGS	486C	4,104C
19.	907802	WAIMANO RIDGE, WATER SYSTEM AND BUILDING IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION TO REPLACE WATER SYSTEM AND OTHER BUILDING IMPROVEMENTS.			
		DESIGN		1	1
		CONSTRUCTION		7,218	1,799
		TOTAL FUNDING	AGS	7,219C	1,800C
20.	907803	WAIMANO RIDGE, DEMOLITION OF BUILDINGS, OAHU			
		DESIGN AND CONSTRUCTION TO REMOVE ALL HAZARDOUS MATERIALS AND TO DEMOLISH BUILDINGS AT WAIMANO RIDGE.			
		DESIGN		357	
		CONSTRUCTION		1,431	
		TOTAL FUNDING	AGS	1,788C	C
21.	P70031	WAIMANO RIDGE MASTER PLAN, OAHU			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F

PLANS FOR A MASTER PLAN FOR WAIMANO RIDGE IN PEARL CITY. PLANNING ACTIVITIES INCLUDING BUT NOT LIMITED TO ATTENDING MEETINGS, PRESENTATIONS, ENVIRONMENTAL ASSESSMENTS, SUB-DIVISION APPLICATIONS, AND OTHER PLANNING ACTIVITIES.

PLANS			700	
TOTAL FUNDING	HTH		700C	C

## F. SOCIAL SERVICES

## HMS501 - IN-COMMUNITY YOUTH PROGRAMS

1. P70032 AMERICAN BOX CAR RACING INTERNATIONAL, OAHU  
 PLANS, DESIGN, AND CONSTRUCTION FOR A YOUTH FACILITY ON OAHU. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.
 

PLANS			1	
DESIGN			1	
CONSTRUCTION			73	
TOTAL FUNDING	HMS		75C	C
2. P70033 HALE KIPA, INC, OAHU  
 DESIGN AND CONSTRUCTION FOR A SERVICES CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.
 

DESIGN			100	
CONSTRUCTION			400	
TOTAL FUNDING	HMS		500C	C
3. P70034 HUI MALAMA I KE KAI FOUNDATION, OAHU  
 CONSTRUCTION FOR THE DEVELOPMENT OF A YOUTH CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.
 

CONSTRUCTION			39	
TOTAL FUNDING	HMS		39C	C

## HMS503 - HAWAII YOUTH CORRECTIONAL FACILITY (HYCF)

4. P70036 LUMP SUM CIP - REPAIRS, IMPROVEMENTS, AND SAFETY MEASURES, OAHU  
 CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO THE HAWAII YOUTH CORRECTIONAL FACILITY TO ADDRESS THE U.S. DEPARTMENT OF JUSTICE MEMORANDUM OF AGREEMENT AND OTHER SAFETY CONCERNS.
 

CONSTRUCTION			800	
TOTAL FUNDING	HMS		800C	C

## DEF112 - SERVICES TO VETERANS

5. OVS932 HAWAII STATE VETERANS CEMETERY, OAHU



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE HAWAII STATE VETERANS CEMETERY. IMPROVEMENTS MAY INCLUDE, BUT NOT BE LIMITED TO, ROAD REPAIR, DRAINAGE REPAIR, AND SLOPE REPAIR ABOVE THE COLUMBARIUM.			
		DESIGN		20	
		CONSTRUCTION		280	
		TOTAL FUNDING	DEF	300 C	C
6.	P70035	LUMP SUM CIP - VETERANS CEMETERY IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO VETERANS CEMETERIES STATEWIDE.			
		PLANS		1	1
		DESIGN		19	99
		CONSTRUCTION		180	900
		TOTAL FUNDING	DEF	200 C	1,000 C
7.	P60032	ARIZONA MEMORIAL MUSEUM ASSOCIATION, OAHU			
		CONSTRUCTION TO REPLACE THE MUSEUM VISITOR CENTER AT THE USS ARIZONA MEMORIAL PARK AND TO CENTRALIZE VISITOR ENTRY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	DEF	1,000 C	C
8.	P70037	PACIFIC AVIATION MUSEUM - PEARL HARBOR, OAHU			
		CONSTRUCTION FOR PHASE II OF THE RESTORATION OF THE HISTORIC STRUCTURES ON FORD ISLAND AND THE CONSTRUCTION OF MUSEUM EXHIBITS WITHIN HANGER 79. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		500	
		TOTAL FUNDING	DEF	500 C	C
9.	P70038	MOLOKAI VETERANS CARING FOR VETERANS, MOLOKAI			
		DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF FACILITIES FOR THE CARING OF VETERANS. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		25	
		CONSTRUCTION		225	
		TOTAL FUNDING	DEF	250 C	C
9.01.		USS MISSOURI MEMORIAL ASSOCIATION, INC.			
		PLANS, DESIGN, AND CONSTRUCTION FOR INDUSTRIAL RENOVATION AND MAINTENANCE SUPPORT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			248
		TOTAL FUNDING	DEF	C	250 C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
<b>HMS601 - ADULT AND COMMUNITY CARE SERVICES</b>					
10.	P70039	LA'A KEA FOUNDATION, MAUI			
		DESIGN AND CONSTRUCTION FOR THE SUNRISE FARM COMMUNITY OF MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		447	
		CONSTRUCTION		1	
		TOTAL FUNDING	HMS	448C	C
11.	P70040	PEARL CITY FOUNDATION, OAHU			
		DESIGN AND CONSTRUCTION FOR AN ADULT DAY HEALTH AND CHILD CARE FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		1,999	
		TOTAL FUNDING	HMS	2,000C	C
<b>HMS220 - RENTAL HOUSING SERVICES</b>					
12.	F22001	ELEVATOR IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR ELEVATOR MODERNIZATION ON HIGH RISE STATE AND FEDERAL BUILDINGS AT KUHIO PARK TERRACE, KALANIHUIA, KALAKAUA HOMES, AND OTHER HPHA ELEVATORS. PROJECT INCLUDES ENVIRONMENTAL DESIGN STRATEGIES PERTAINING TO SECURITY.			
		DESIGN		750	410
		CONSTRUCTION		4,250	6,000
		TOTAL FUNDING	HMS	5,000C	6,410C
13.	F22002	LUMP SUM CIP - NON-ROUTINE REPAIR AND MAINTENANCE IMPROVEMENTS AND RENOVATIONS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR NON-ROUTINE REPAIR AND MAINTENANCE, IMPROVEMENTS, AND RENOVATIONS STATEWIDE.			
		DESIGN		2,000	1,000
		CONSTRUCTION		18,000	9,000
		TOTAL FUNDING	HMS	20,000C	10,000C
<b>HMS224 - HOMELESS SERVICES</b>					
14.	P70041	WAIMANALO HOMELESS SHELTER, OAHU			
		PLANS AND DESIGN FOR A HOMELESS SHELTER IN WAIMANALO.			
		PLANS		1	
		DESIGN		299	
		TOTAL FUNDING	HMS	300C	C
15.	P70042	HAWAII COALITION OF CHRISTIAN CHURCHES, OAHU			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		CONSTRUCTION FOR EMERGENCY, TRANSITIONAL, AND/OR LOW INCOME HOUSING. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		250	
		TOTAL FUNDING	HMS	250 C	C
16.	P70043	HAWAII HABITAT FOR HUMANITY ASSOCIATION, INC., STATEWIDE			
		CONSTRUCTION FOR THE PURCHASE OF CONSTRUCTION MATERIALS. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		300	
		TOTAL FUNDING	HMS	300 C	C
16.01.		KALOKO HOUSING PROGRAM, HAWAII			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TRANSITIONAL HOUSING.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			1,451
		EQUIPMENT			1
		TOTAL FUNDING	HMS	C	1,454 C
<b>HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS</b>					
17.	P70044	LAIOPUA 2020, HAWAII			
		DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF A REGIONAL RECREATION AND COMMUNITY CENTER COMPLEX. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	1
		CONSTRUCTION		124	249
		TOTAL FUNDING	HHL	125 C	250 C
18.	P70045	NANAKULI HAWAIIAN HOMESTEAD COMMUNITY ASSOCIATION, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF A HAWAIIAN CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		248	298
		TOTAL FUNDING	HHL	250 C	300 C
18.01.		LDD 001 HAWAIIAN HOME LANDS DEVELOPMENT, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF ON-SITE AND OFF-SITE HAWAIIAN HOME LANDS CAPITAL IMPROVEMENT PROJECTS PERMITTED BY THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			99,998
		TOTAL FUNDING	HHL	E	100,000 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F

**HTH904 - EXECUTIVE OFFICE ON AGING**

19.	P70046	PALOLO CHINESE HOME, OAHU				
		CONSTRUCTION FOR THE PALOLO CHINESE HOME'S FOOD SERVICE COMPLEX, WELLNESS CENTER, AND SUPPORTING INFRASTRUCTURE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION			250	
		TOTAL FUNDING	HTH		250C	C
19.01.		PALOLO CHINESE HOME, OAHU				
		PLANS AND DESIGN FOR THE RENOVATION OF THE DINING HALL AND THE CARE HOME BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		PLANS				200
		DESIGN				600
		TOTAL FUNDING	HTH		C	800C

**HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES**

20.	P70047	HALE MAKUA, MAUI				
		CONSTRUCTION FOR INSTALLATION OF A NEW SPRINKLER SYSTEM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION			750	
		TOTAL FUNDING	HMS		750C	C

**G. FORMAL EDUCATION**

**EDN100 - SCHOOL-BASED BUDGETING**

1.	0014	LUMP SUM CIP - PROJECT POSITIONS, STATEWIDE				
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.				
		PLANS			3,870	4,600
		TOTAL FUNDING	EDN		3,870B	4,600B
2.	001001	LUMP SUM CIP - RELOCATE/CONSTRUCT TEMPORARY FACILITIES, STATEWIDE				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES AND RELATED SITE IMPROVEMENTS, EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY				

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR CONSTRUCTED.			
		DESIGN		200	
		CONSTRUCTION		7,100	
		EQUIPMENT		128	
		TOTAL FUNDING	EDN	6,000B	B
			EDN	1,428R	R
3.	000018	LUMP SUM CIP - CESSPOOL REMOVAL, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE ELIMINATION OF CESSPOOLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	100
		CONSTRUCTION		4,900	48,920
		TOTAL FUNDING	EDN	5,000B	49,020B
4.	020	LUMP SUM CIP - SCHOOL BUILDING IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC SCHOOL FACILITIES, STATEWIDE. MAY INCLUDE PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES, ROOFING, AIR CONDITIONING, PAINTING, PLUMBING, AND OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES.			
		DESIGN		10,000	2,700
		CONSTRUCTION		65,000	63,761
		TOTAL FUNDING	EDN	25,000B	66,461B
			EDN	50,000A	A
5.	000010	LUMP SUM CIP - PROJECT ADJUSTMENT FUND, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DEPARTMENT OF EDUCATION PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		300	300
		CONSTRUCTION		697	697
		EQUIPMENT		1	1
		TOTAL FUNDING	EDN	1,000B	1,000B
6.	006006	LUMP SUM CIP - ARCHITECTURAL BARRIER REMOVAL, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS.			
		DESIGN		200	100
		CONSTRUCTION		2,300	1,900
		TOTAL FUNDING	EDN	2,500B	2,000B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
7.	007071	LUMP SUM CIP - PUBLIC ACCOMMODATIONS TRANSITION PLAN, STATEWIDE DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC.			
		DESIGN		200	100
		CONSTRUCTION		2,300	1,900
		TOTAL FUNDING	EDN	2,500 B	2,000 B
8.	008008	LUMP SUM CIP - ASBESTOS/LEAD REMOVAL, STATEWIDE DESIGN AND CONSTRUCTION FOR THE CORRECTION, IMPROVEMENT, AND RENOVATION OF ALL EXISTING SCHOOL BUILDINGS. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND/OR LEAD.			
		DESIGN		100	100
		CONSTRUCTION		900	900
		TOTAL FUNDING	EDN	1,000 B	1,000 B
9.	000007	LUMP SUM CIP - SPECIAL EDUCATION RENOVATIONS, STATEWIDE DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE CLASSROOMS TO ADDRESS SPECIAL EDUCATION NEEDS.			
		DESIGN		150	150
		CONSTRUCTION		825	825
		EQUIPMENT		25	25
		TOTAL FUNDING	EDN	1,000 B	1,000 B
10.	19	LUMP SUM CIP - GENDER EQUITY, STATEWIDE DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GENDER EQUITY PROJECTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		300	300
		CONSTRUCTION		500	500
		EQUIPMENT		200	200
		TOTAL FUNDING	EDN	1,000 B	1,000 B
11.	005005	LUMP SUM CIP - FIRE PROTECTION, STATEWIDE DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE CODE VIOLATIONS.			
		DESIGN		100	100
		CONSTRUCTION		400	400
		TOTAL FUNDING	EDN	500 B	500 B
12.	009009	LUMP SUM CIP - HEALTH AND SAFETY, STATEWIDE DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS, AND ORDINANCES AND/OR COUNTY REQUIREMENTS.			
		DESIGN		100	100
		CONSTRUCTION		400	400
		TOTAL FUNDING	EDN	500 B	500 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
13.	014050	LUMP SUM CIP - ELECTRICAL UPGRADES, STATEWIDE PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES AT VARIOUS SCHOOLS.			
		PLANS		1	
		DESIGN		2,498	
		CONSTRUCTION		22,500	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	25,000B	B
14.	004004	LUMP SUM CIP - NOISE/HEAT ABATEMENT, STATEWIDE DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE AND VENTILATION PROBLEMS.			
		DESIGN		400	400
		CONSTRUCTION		3,600	3,600
		TOTAL FUNDING	EDN	4,000B	4,000B
15.	011	LUMP SUM CIP - TELECOMMUNICATIONS, STATEWIDE DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS, AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		250	250
		CONSTRUCTION		1,700	1,700
		EQUIPMENT		50	50
		TOTAL FUNDING	EDN	2,000B	2,000B
16.	18	LUMP SUM CIP - MASTER PLAN/LAND ACQUISITION, STATEWIDE PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES, ACQUISITION OF SMALL PARCELS, FEASIBILITY STUDIES TO MEET FUTURE AND UNFORESEEN NEEDS AND CIP ASSISTANCE FROM CONSULTANTS IN PROVIDING COST ESTIMATES.			
		PLANS		895	120
		LAND		5	5
		TOTAL FUNDING	EDN	900B	125B
17.	P00026	LUMP SUM CIP - PLAYGROUND EQUIPMENT AND ACCESSIBILITY, STATEWIDE DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	50
		CONSTRUCTION		1,430	1,430

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		EQUIPMENT		20	20
		TOTAL FUNDING	EDN	1,500 B	1,500 B
17.01.	023	LUMP SUM CIP - CLASSROOM RENOVATIONS, STATEWIDE			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOM RENOVATIONS, ADDITIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES			
		DESIGN			1
		CONSTRUCTION			99,998
		EQUIPMENT			1
		TOTAL FUNDING	EDN	B	100,000 B
18.	P70048	AHUIMANU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		540	
		TOTAL FUNDING	EDN	590 B	B
19.	P70049	AIEA INTERMEDIATE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO EXPAND AND RENOVATE THE CAFETERIA STAGE, AND ADD DRESSING ROOMS ON EITHER SIDE OF THE STAGE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		160	
		CONSTRUCTION		1,560	
		EQUIPMENT		20	
		TOTAL FUNDING	EDN	1,740 B	B
20.	P70050	ALA WAI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO REROOF AND REPAIR WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		10	
		CONSTRUCTION		90	
		TOTAL FUNDING	EDN	100 B	B
20.01.		ALIAMANU MIDDLE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTALLATION OF CEILING AC IN SHOP CLASSROOM RENOVATED TO SERVE AS LIBRARY AND MEETING ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			1



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		EQUIPMENT			19
		TOTAL FUNDING	EDN	B	21B
21.	P70051	ALIOLANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO INSTALL DRAINAGE DITCH ALONG CAFETERIA BUILDING AND PAVE ADJACENT PARKING AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			15
		CONSTRUCTION			70
		TOTAL FUNDING	EDN	85B	B
22.	P70052	AUGUST AHRENS ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR HEAT ABATEMENT IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			90
		CONSTRUCTION			910
		TOTAL FUNDING	EDN	1,000B	B
22.01.		AUGUST AHRENS ELEMENTARY SCHOOL, OAHU			
		PLANS AND DESIGN FOR NEW CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1,199
		TOTAL FUNDING	EDN	B	1,200B
23.	P70053	BALDWIN HIGH SCHOOL, MAUI			
		DESIGN AND CONSTRUCTION FOR TELECOMMUNICATIONS UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			80
		CONSTRUCTION			780
		TOTAL FUNDING	EDN	860B	B
23.01.		BARBERS POINT ELEMENTARY SCHOOL, OAHU			
		PLANS AND DESIGN FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			50
		DESIGN			50
		TOTAL FUNDING	EDN	B	100B
24.	P70054	CASTLE HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR DINING ROOM EXPANSION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			270
		CONSTRUCTION			2,830
		TOTAL FUNDING	EDN	3,100B	B

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
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24.01.		CASTLE HIGH SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL UPGRADES AND THEATRICAL LIGHTING IN RONALD BRIGHT THEATER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			9
		DESIGN			1
		CONSTRUCTION			25
		EQUIPMENT			250
		TOTAL FUNDING	EDN	B	285 B
25.	P70055	DOLE MIDDLE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TEMPORARY FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		1,050	
		EQUIPMENT		50	
		TOTAL FUNDING	EDN	1,200 B	B
26.	P70056	DOLE MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO REROOF THE KITCHEN; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		10	
		CONSTRUCTION		158	
		TOTAL FUNDING	EDN	168 B	B
27.	P70057	ELEELE ELEMENTARY, KAUAI			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		70	
		CONSTRUCTION		680	
		TOTAL FUNDING	EDN	750 B	B
28.	051	EWA MAKAI MIDDLE SCHOOL, NEW SCHOOL, OAHU			
		LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW MIDDLE SCHOOL IN THE EWA REGION; GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.			
		LAND		1	
		DESIGN		1	
		CONSTRUCTION		66,881	
		EQUIPMENT			800
		TOTAL FUNDING	EDN	66,883 B	800 B
28.01.		HANA HIGH AND ELEMENTARY, MAUI			
		PLANS AND DESIGN FOR A NEW ADMINISTRATION BUILDING AND RENOVATION OF THE EXISTING SCIENCE CLASSROOM.			
		PLANS			1

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				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		DESIGN			645
		TOTAL FUNDING	EDN	B	646B
29.	P70058	HILO HIGH SCHOOL, HAWAII			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW GYMNASIUM THAT WILL ALSO SERVE AS AN EMERGENCY SHELTER, TO INCLUDE DEMOLITION OF THE EXISTING GYM IF NECESSARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			4,998
		EQUIPMENT			1
		TOTAL FUNDING	EDN	5,000B	B
30.	P70059	HONOWAI ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			100
		CONSTRUCTION			1,899
		EQUIPMENT			1
		TOTAL FUNDING	EDN	2,000B	B
31.	P70060	ILIAHI ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PLAY COURT COVER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			150
		CONSTRUCTION			1,349
		EQUIPMENT			1
		TOTAL FUNDING	EDN	1,500B	B
32.	P70061	JARRETT MIDDLE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW REINFORCED CEMENT FOUNDATION AND FLOOR TILING FOR BUILDINGS A AND B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			20
		CONSTRUCTION			819
		EQUIPMENT			1
		TOTAL FUNDING	EDN	840B	B
33.	P70062	JEFFERSON ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL IMPROVEMENTS FOR BUILDING R; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			10
		CONSTRUCTION			240
		TOTAL FUNDING	EDN	250B	B
34.	P70063	JEFFERSON ELEMENTARY SCHOOL, OAHU			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
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		DESIGN AND CONSTRUCTION FOR RESTROOM RENOVATIONS FOR BUILDING O; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		10	
		CONSTRUCTION		240	
		TOTAL FUNDING	EDN	250B	B
35.	P70064	KAAAWA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		393	
		TOTAL FUNDING	EDN	443B	B
36.	P70065	KAEWAI ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		38	
		CONSTRUCTION		500	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	539B	B
37.	P70066	KAEWAI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO REPLACE KITCHEN FLOOR; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		64	
		TOTAL FUNDING	EDN	65B	B
37.01.		KAEWAI ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR LIBRARY ENTRY DRAINAGE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			10
		DESIGN			10
		CONSTRUCTION			230
		TOTAL FUNDING	EDN	B	250B
37.02.	P70067	KAILUA HIGH SCHOOL, OAHU			
		PLANS AND DESIGN FOR A NATURAL SCIENCE CLASSROOM/RESEARCH LAB AND LIBRARY BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			100
		DESIGN			750
		TOTAL FUNDING	EDN	B	850B

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38.	P70067	KAILUA INTERMEDIATE SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR PHYSICAL EDUCATION COMPLEX IMPROVEMENTS TO CREATE A RECREATION CENTER FOR KAILUA YOUTH; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION		1,249	
		TOTAL FUNDING	EDN	1,250B	B
39.	P70068	KAIMUKI HIGH SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR RESTROOM FACILITIES FOR THE SOFTBALL FIELD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		150	
		CONSTRUCTION		850	
		TOTAL FUNDING	EDN	1,000B	B
40.	08P021	KALAHEO ELEMENTARY SCHOOL, KAUAI DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ADMINISTRATION/ CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		4,998	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	5,000B	B
41.	P70069	KALAHEO HIGH SCHOOL, OAHU DESIGN OF A NEW FOOTBALL/TRACK FIELD AND SPECTATOR SEATING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		300	
		TOTAL FUNDING	EDN	300B	B
42.	420A51	KALAMA INTERMEDIATE SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR RENOVATION OF THE ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		499	
		CONSTRUCTION		1	
		TOTAL FUNDING	EDN	500B	B
43.	P70070	KALEIOPUU ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR A COVERED WALKWAY TO THE CAFETERIA AND OFFICE AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		10	
		CONSTRUCTION		75	
		TOTAL FUNDING	EDN	85B	B

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44.	P70071	KALEIOPUU ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		25	
		CONSTRUCTION		524	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	550 B	B
44.01.		KALIHI ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR NEW ADA-COMPLIANT RESTROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			50
		DESIGN			50
		CONSTRUCTION			400
		TOTAL FUNDING	EDN	B	500 B
45.	P70072	KALIHI KAI ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		74	
		CONSTRUCTION		700	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	775 B	B
46.	P50074	KALIHI UKA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR RENOVATION OF RESTROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. WORK TO INCLUDE BUT NOT BE LIMITED TO FIXTURE REPLACEMENT AND RENOVATION OF PLUMBING TO REDUCE WATER USAGE.			
		DESIGN		44	
		CONSTRUCTION		276	
		TOTAL FUNDING	EDN	320 B	B
46.01.		KALIHI UKA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR NEW SECURITY FENCING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			5
		DESIGN			5
		CONSTRUCTION			25
		TOTAL FUNDING	EDN	B	35 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
47.	P70073	KALIHI WAENA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR HEAT ABATEMENT IMPROVEMENTS FOR THE MUSIC ROOM, COMPUTER LAB, AND ADJOINING CLASSROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		25	
		CONSTRUCTION		275	
		TOTAL FUNDING	EDN	300B	B
47.01.		KALIHI WAENA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR BUILDING B ADA ACCESS RAMP; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			30
		DESIGN			1
		CONSTRUCTION			122
		TOTAL FUNDING	EDN	B	153B
48.	P70074	KANOELANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		850	
		TOTAL FUNDING	EDN	950B	B
49.	08P031	KAPAA ELEMENTARY SCHOOL, KAUAI			
		DESIGN FOR A LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		460	
		TOTAL FUNDING	EDN	460B	B
50.	P70075	KAPUNAHALA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A MECHANICAL LIFT IN BUILDING B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		280	
		TOTAL FUNDING	EDN	330B	B
51.	P70076	KAUAI HIGH SCHOOL, KAUAI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		74	
		CONSTRUCTION		700	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	775B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
52.	P70077	KAUAI HIGH SCHOOL, KAUAI PLANS, DESIGN, AND CONSTRUCTION FOR A NEW GYMNASIUM/AUDITORIUM (GYMNATORIUM); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		998	
		CONSTRUCTION		1	
		TOTAL FUNDING	EDN	1,000B	B
53.	P70078	KAULUWELA ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR A COVERED WALK WAY BETWEEN BUILDINGS E AND F; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		15	
		CONSTRUCTION		85	
		TOTAL FUNDING	EDN	100B	B
53.01.	09P029	KAUNAKAKAI ELEMENTARY SCHOOL, MOLOKAI DESIGN FOR A NEW CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			750
		TOTAL FUNDING	EDN	B	750B
54.	P70079	KAWANANAKOA MIDDLE SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		80	
		CONSTRUCTION		395	
		TOTAL FUNDING	EDN	475B	B
55.	P70080	KEALAKEHE ELEMENTARY SCHOOL, HAWAII DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		60	
		CONSTRUCTION		801	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	862B	B
56.	P70081	KEALAKEHE HIGH SCHOOL, HAWAII DESIGN, CONSTRUCTION, AND EQUIPMENT FOR SOFTBALL FIELD IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		449	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	500B	B



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
56.01.		KEAUKAHA ELEMENTARY SCHOOL, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR A 6,000 SQUARE FOOT CAFETERIA KITCHEN AND DINING ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			598
		CONSTRUCTION			1
		TOTAL FUNDING	EDN	B	600B
56.02.		KIHEI ELEMENTARY SCHOOL, MAUI			
		DESIGN AND CONSTRUCTION FOR UPGRADES TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			374
		TOTAL FUNDING	EDN	B	375B
57.	P60066	KIHEI HIGH SCHOOL, MAUI			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW HIGH SCHOOL IN KIHEI, MAUI; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			200
		LAND			1
		DESIGN			3,365
		CONSTRUCTION			16,433
		EQUIPMENT			1
		TOTAL FUNDING	EDN	B	20,000B
58.	459B51	KILAUEA ELEMENTARY SCHOOL, KAUAI			
		CONSTRUCTION FOR A CAFETERIA; RELOCATE OR DEMOLISH EXISTING CAFETERIA BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		4,500	
		TOTAL FUNDING	EDN	4,500B	B
59.	08P032	KING KAMEHAMEHA III ELEMENTARY SCHOOL, MAUI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMEDIATION OF SINKHOLES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		350	
		CONSTRUCTION		649	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	1,000B	B
60.	P60067	KING KEKAULIKE HIGH SCHOOL, MAUI			
		DESIGN FOR A NEW AUDITORIUM.			
		DESIGN		410	
		TOTAL FUNDING	EDN	410B	B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
61.	P70082	KOLOA ELEMENTARY SCHOOL, KAUAI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		699	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	750 B	B
62.	P70083	KUHIO ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A MULTIPURPOSE CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		40	
		CONSTRUCTION		659	
		TOTAL FUNDING	EDN	700 B	B
63.	P70084	LAHAINALUNA HIGH SCHOOL, MAUI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO PROVIDE ADDITIONAL FUNDS FOR A NEW CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	1
		CONSTRUCTION		5,998	5,998
		EQUIPMENT		1	1
		TOTAL FUNDING	EDN	6,000 B	6,000 B
63.01.	415051	LANAI HIGH AND ELEMENTARY SCHOOL, LANAI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			7,998
		EQUIPMENT			1
		TOTAL FUNDING	EDN	B	8,000 B
64.	P70085	LANAKILA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		70	
		CONSTRUCTION		469	
		TOTAL FUNDING	EDN	539 B	B
64.01.		LEHUA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A NEW PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			100

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		CONSTRUCTION			700
		TOTAL FUNDING	EDN	B	800B
64.02.		LEILEHUA HIGH SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF A SYNTHETIC FIELD TURF SURFACE ON THE FOOTBALL FIELD AND IMPROVEMENTS TO THE TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			3,343
		EQUIPMENT			1
		TOTAL FUNDING	EDN	B	3,346B
64.03.		LILIUOKALANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR SCHOOL ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			75
		CONSTRUCTION			437
		TOTAL FUNDING	EDN	B	512B
65.	P70086	LINAPUNI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR SOIL STABILIZATION AND STRUCTURAL REPAIRS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			80
		CONSTRUCTION			720
		TOTAL FUNDING	EDN	800B	B
66.	P70087	LINCOLN ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR STRUCTURAL REPAIR TO ROCK WALL AT THE MAKAI END OF LINCOLN SCHOOL'S PARKING LOT AND DRAINAGE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			90
		CONSTRUCTION			850
		TOTAL FUNDING	EDN	940B	B
66.01.		LOKELANI INTERMEDIATE SCHOOL, MAUI			
		PLANS, DESIGN, AND CONSTRUCTION FOR SAFETY PROJECTS INCLUDING TRAFFIC SAFETY, SPEED BUMPS AND FIRELINE REPLACEMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			78
		TOTAL FUNDING	EDN	B	80B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
66.02.		MAILI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR RAMPS, ELEVATORS AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			9
		TOTAL FUNDING	EDN	B	10B
66.03.		MAKAHA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR RAMPS, ELEVATORS AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			9
		TOTAL FUNDING	EDN	B	10B
67.	P70088	MAUI HIGH SCHOOL, MAUI			
		DESIGN AND CONSTRUCTION FOR A MULTIPURPOSE CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1,081	
		CONSTRUCTION		1	7,000
		TOTAL FUNDING	EDN	1,082B	7,000B
68.	P70089	MAUKA LANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		40	
		CONSTRUCTION		435	
		TOTAL FUNDING	EDN	475B	B
68.01.		MCKINLEY HIGH SCHOOL, OAHU			
		PLANS FOR AN ATHLETIC COMPLEX; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			450
		TOTAL FUNDING	EDN	B	450B
69.	P70090	MILILANI HIGH SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		1,000	
		EQUIPMENT		45	
		TOTAL FUNDING	EDN	1,145B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
70.	P70091	MILILANI HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF A DROP OFF AREA, TURN AROUND, AND GUEST PARKING FOR THE NEW CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		30	
		CONSTRUCTION		270	
		TOTAL FUNDING	EDN	300B	B
70.01.		MILILANI HIGH SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF SYNTHETIC TURF IN THE SPORTS STADIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			928
		TOTAL FUNDING	EDN	B	930B
71.	P70092	MILILANI MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF A ROOF OR ROOFS OVER THE EXISTING PLAY COURTS AND INSTALLATION OF LIGHTING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		CONSTRUCTION		2,300	
		TOTAL FUNDING	EDN	2,500B	B
72.	P70093	MILILANI UKA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		75	
		CONSTRUCTION		500	
		TOTAL FUNDING	EDN	575B	B
72.01.		MILILANI UKA ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION TO STABILIZE AN UNDEVELOPED ERODING SLOPE NEAR A SCHOOL BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			484
		TOTAL FUNDING	EDN	B	484B
73.	P70094	MILILANI WAENA ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PARTITIONS IN OPEN-POD CLASSROOMS, AND IF FUNDS PERMIT, AIR CONDITIONING FOR THOSE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		DESIGN		200	
		CONSTRUCTION		1,940	
		EQUIPMENT		20	
		TOTAL FUNDING	EDN	2,160B	B
74.	P60078	MOANALUA HIGH SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR SCHOOL AUDITORIUM/ PERFORMING ARTS CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		799	
		CONSTRUCTION		11,400	
		EQUIPMENT		100	
		TOTAL FUNDING	EDN	12,300B	B
74.01.		MOANALUA HIGH SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ARTIFICIAL SURFACE FIELD FOR THE PHYSICAL EDUCATION PROGRAM, ATHLETIC ACTIVITIES, AND BAND ACTIVITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			I
		CONSTRUCTION			948
		EQUIPMENT			I
		TOTAL FUNDING	EDN	B	950B
75.	P70095	MOLOKAI HIGH SCHOOL, MOLOKAI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TWO NEW SCIENCE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			120
		CONSTRUCTION			1,400
		EQUIPMENT			25
		TOTAL FUNDING	EDN	B	1,545B
75.01.		MOUNTAIN VIEW ELEMENTARY SCHOOL, HAWAII			
		DESIGN AND CONSTRUCTION FOR ADA COMPLIANCE AND NEW COVERED WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			699
		TOTAL FUNDING	EDN	B	700B
76.	08P030	NANAKULI HIGH AND INTERMEDIATE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1,335	
		CONSTRUCTION		1	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	1,337B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
77.	P70096	NANAKULI HIGH AND INTERMEDIATE SCHOOL, OAHU PLANS AND DESIGN FOR A LEEWARD REGIONAL TRACK AND FIELD STADIUM TO INCLUDE A FULL SIZED FOUR HUNDRED METER-EIGHT LANE SYNTHETIC RUNNING TRACK AND COMPLETE FIELD EVENT AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS DESIGN		60	
		TOTAL FUNDING	EDN	1,500	
				1,560 B	B
77.01.		NANAKULI ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR RAMPS, ELEVATORS AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN CONSTRUCTION			1
		TOTAL FUNDING	EDN		9
				B	10 B
78.	P70097	NIU VALLEY MIDDLE SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR ARCHITECTURAL BARRIER REMOVAL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN CONSTRUCTION		100	
		TOTAL FUNDING	EDN	900	
				1,000 B	B
80. <sup>2</sup>	P70099	NOELANI ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR LIBRARY IMPROVEMENTS TO ENLARGE LIBRARY WORKSPACE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN CONSTRUCTION		50	
		TOTAL FUNDING	EDN	450	
				500 B	B
80.01.		OLOMANA SCHOOL, OAHU PLANS AND DESIGN FOR ATHLETIC FACILITIES INCLUDING AN OPEN-AIR FIELD HOUSE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS DESIGN			150
		TOTAL FUNDING	EDN		50
				B	200 B
81.	P70100	PAHOA HIGH AND INTERMEDIATE SCHOOL, HAWAII CONSTRUCTION FOR A NEW GYMNASIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		3,000	
		TOTAL FUNDING	EDN	3,000 B	B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
81.01.		PAHOA HIGH AND INTERMEDIATE SCHOOL, HAWAII			
		DESIGN AND CONSTRUCTION OF A COVERED WALK WAY FROM P21 TO BUILDING Q; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			199
		TOTAL FUNDING	EDN	B	200 B
82.	08P022	PAIA ELEMENTARY SCHOOL, MAUI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW CAFETERIA BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		320	1
		CONSTRUCTION		4,600	1,500
		EQUIPMENT		80	499
		TOTAL FUNDING	EDN	5,000 B	2,000 B
83.	P70101	PAUOA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM IMPROVEMENTS AND REROOFING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		110	
		CONSTRUCTION		500	
		TOTAL FUNDING	EDN	610 B	B
84.	P70102	PEARL CITY ELEMENTARY, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR SCHOOL LIBRARY EXPANSION, RENOVATION, AND IMPROVEMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		251	1
		CONSTRUCTION			1,998
		EQUIPMENT			1
		TOTAL FUNDING	EDN	251 B	2,000 B
85.	P70103	PEARL CITY HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF STORAGE FOR BAND INSTRUMENTS IN THE BAND ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		10	
		CONSTRUCTION		55	
		TOTAL FUNDING	EDN	65 B	B
86.	P70104	PUKALANI ELEMENTARY SCHOOL, MAUI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		58	
		CONSTRUCTION		850	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	909 B	B



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
86.01.		PUKALANI ELEMENTARY SCHOOL, MAUI			
		PLANS AND DESIGN FOR SCHOOL RENOVATION TO INCLUDE A NEW ADMINISTRATION/LIBRARY BUILDING, CLASSROOM RENOVATIONS AND ADA TRANSITIONAL ACCESSIBILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS DESIGN			1
		TOTAL FUNDING	EDN	B	399
					400B
87.	P70105	QUEEN KAAHUMANU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO EXTEND PAVED TEACHER PARKING AREA AND CONSTRUCT A FENCE AROUND THE NEWLY EXPANDED PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			25
		CONSTRUCTION			255
		TOTAL FUNDING	EDN		280B
					B
88.	P60088	RADFORD HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A MULTI-PURPOSE ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			299
		TOTAL FUNDING	EDN		300B
					B
89.	P70106	STEVENSON MIDDLE SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR AN ADDITION TO BUILDING A OR A STAND ALONE BUILDING AT STEVENSON MIDDLE SCHOOL FOR MULTIPURPOSE EDUCATIONAL FACILITIES AND RELOCATION OF THE ADMINISTRATIVE AND SUPPORT OFFICES AND RENOVATION OF THE EXISTING ADMINISTRATIVE SERVICES SPACE FOR CLASSROOM USE. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS DESIGN			175
		CONSTRUCTION			374
		EQUIPMENT			1
		TOTAL FUNDING	EDN		550B
					100
					700
					6,350
					50
					7,200B
89.01.		STEVENSON MIDDLE SCHOOL, MULTIPURPOSE RECREATIONAL FACILITY, OAHU			
		PLANS AND DESIGN FOR A MULTIPURPOSE RECREATIONAL FACILITY INCLUDING CLASSROOMS, GYMNASIUM, LOCKER ROOMS AND MEETING SPACE; GROUND AND			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS DESIGN			10
		TOTAL FUNDING	EDN	B	1,490
					1,500B
90.	P70107	WAIAHOLE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			393
		TOTAL FUNDING	EDN		443B
					B
91.	P70108	WAIAKEA HIGH SCHOOL, HAWAII			
		PLANS AND DESIGN FOR A NEW ALL WEATHER TRACK AND FIELD FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS DESIGN			1
		TOTAL FUNDING	EDN		399
					400B
					B
92.	P70109	WAIAKEA HIGH SCHOOL, HAWAII			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR SOFTBALL FIELD IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			49
		CONSTRUCTION			450
		EQUIPMENT			1
		TOTAL FUNDING	EDN		500B
					B
93.	P70110	WAIAKEAWAENA ELEMENTARY SCHOOL, HAWAII			
		DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING ALONG KINOOLE.			
		DESIGN			1
		CONSTRUCTION			39
		TOTAL FUNDING	EDN		40B
					B
93.01.		WAIALAE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO ENCLOSE SCHOOL COURTYARD AND BUILD 3 CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			200
		CONSTRUCTION			625
		TOTAL FUNDING	EDN		825B
					B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
94.	P70111	WAIALUA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A MULTI-MEDIA BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		CONSTRUCTION		2,300	
		TOTAL FUNDING	EDN	2,500	B
95.	P70112	WAIANAE HIGH SCHOOL, OAHU			
		PLANS AND DESIGN FOR A NEW CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		899	
		TOTAL FUNDING	EDN	900	B
95.01.		WAIANAE HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ARCHITECTURAL BARRIER REMOVAL TO PROVIDE RAMPS, ELEVATORS AND OTHER CORRECTIVE MEASURES ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			9
		TOTAL FUNDING	EDN	B	10B
95.02.		WAIANAE INTERMEDIATE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ARCHITECTURAL BARRIER REMOVAL TO PROVIDE RAMPS, ELEVATORS AND OTHER CORRECTIVE MEASURES ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			9
		TOTAL FUNDING	EDN	B	10B
95.03.		WAIAU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR EXPANSION OF THE SCHOOL PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			300
		CONSTRUCTION			1,200
		TOTAL FUNDING	EDN	B	1,500B
96.	P70113	WAIHEE ELEMENTARY SCHOOL, MAUI			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		DESIGN AND CONSTRUCTION FOR RENOVATION AND STRUCTURAL IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		600	
		CONSTRUCTION		2,000	
		TOTAL FUNDING	EDN	2,600B	B
97.	P70114	WAIKELE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO EXPAND FACULTY PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		10	
		CONSTRUCTION		90	
		TOTAL FUNDING	EDN	100B	B
98.	09P026	WAILUKU II ELEMENTARY SCHOOL, NEW SCHOOL, MAUI			
		LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		LAND		1	
		DESIGN		1,117	
		CONSTRUCTION		39,659	
		EQUIPMENT		600	
		TOTAL FUNDING	EDN	41,377B	B
99.	P70115	WAILUPE VALLEY ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		65	
		CONSTRUCTION		604	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	670B	B
100.	233F52	WAIMALU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR EXPANSION OF LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		CONSTRUCTION		3,700	
		TOTAL FUNDING	EDN	3,900B	B
101.	P70116	WAIPAHA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ARCHITECTURAL BARRIER REMOVAL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		10	
		CONSTRUCTION		90	
		TOTAL FUNDING	EDN	100B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
102.	P70117	WAIPAHAU HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR FENCING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		5	
		CONSTRUCTION		70	
		TOTAL FUNDING	EDN	75 B	B
102.01.		WEBLING ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO COMPLETE SITING AND CONSTRUCTION OF PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			248
		TOTAL FUNDING	EDN	B	250 B
103.	P70118	WEST MAUI ELEMENTARY SCHOOL, NEW SCHOOL, MAUI			
		PLANS AND DESIGN FOR A NEW ELEMENTARY SCHOOL.			
		PLANS		649	
		DESIGN		1	
		TOTAL FUNDING	EDN	650 B	B
104.	P70119	MALAMA LEARNING CENTER, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A SUSTAINABLE BUILDING FOR SCIENCE, CONSERVATION, CULTURE, AND ARTS EDUCATION IN WEST OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		273	498
		TOTAL FUNDING	EDN	275 C	500 C
105.	P70120	CHILDREN'S DISCOVERY CENTER, OAHU			
		CONSTRUCTION FOR FACILITY IMPROVEMENTS AT THE CHILDREN'S DISCOVERY CENTER. PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		125	300
		TOTAL FUNDING	EDN	125 C	300 C
106.	P70121	KCAA PRESCHOOLS OF HAWAII, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR DEVELOPMENT OF NEW TRAINING CENTER. PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		248	
		TOTAL FUNDING	EDN	250 C	C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
106.01.		SUPPORTING THE LANGUAGE OF KAUAI INC., KAUAI			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT MODULAR AND STATIONARY BUILDINGS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			42
		DESIGN			35
		CONSTRUCTION			1,700
		EQUIPMENT			23
		TOTAL FUNDING	EDN	C	1,800C
106.02.		FRIENDS OF OLD MAUI HIGH SCHOOL, MAUI			
		PLANS, DESIGN, AND CONSTRUCTION FOR PRESERVATION OF THE OLD MAUI HIGH SCHOOL, PATSY T. MINK CENTER. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			198
		TOTAL FUNDING	EDN	C	200C
106.03.		MAKAKILO BAPTIST CHURCH PRESCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A NEW CLASSROOM BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			198
		TOTAL FUNDING	EDN	C	200C
<b>EDN407 - PUBLIC LIBRARIES</b>					
107.	01-H S	HEALTH AND SAFETY, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH, SAFETY, ACCESSIBILITY, AND OTHER CODE REQUIREMENTS. PROJECT MAY INCLUDE, BUT NOT BE LIMITED TO, THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS FOR LIBRARY PATRONS AND EMPLOYEES, ENVIRONMENTAL CONTROLS, FIRE PROTECTION, IMPROVEMENTS TO BUILDING AND GROUNDS, AND OTHER RELATED WORK.			
		PLANS		300	200
		DESIGN		1,200	250
		CONSTRUCTION		4,025	2,950
		EQUIPMENT		100	100
		TOTAL FUNDING	AGS	5,625C	3,500C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
108.	G 107	ENERGY EFFICIENCY PROJECTS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR ENERGY EFFICIENCY, ENERGY CONSERVATION AND/OR SUSTAINABILITY, STATEWIDE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN		500	499
		CONSTRUCTION		3,500	3,000
		TOTAL FUNDING	AGS	4,000	3,500
109.	P70122	MANOA PUBLIC LIBRARY EXPANSION, OAHU			
		DESIGN AND CONSTRUCTION FOR LIBRARY EXPANSION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		1,200	
		TOTAL FUNDING	AGS	1,300	C
110.	P70123	MILILANI PUBLIC LIBRARY PARKING LOT EXPANSION, OAHU			
		DESIGN AND CONSTRUCTION FOR PARKING LOT EXPANSION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		CONSTRUCTION		1,300	
		TOTAL FUNDING	AGS	1,500	C
111.	P70124	KEAAU PUBLIC LIBRARY, HAWAII			
		PLANS, LAND ACQUISITION, AND DESIGN FOR A NEW PUBLIC LIBRARY IN KEAAU, HAWAII.			
		PLANS		1	
		LAND		1	
		DESIGN		2,998	
		TOTAL FUNDING	AGS	3,000	C
112.	P70125	MANOA PUBLIC LIBRARY INTERIM FACILITIES, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TWO PORTABLE CLASSROOMS TO BE LOCATED ON THE GROUNDS OF NOELANI ELEMENTARY SCHOOL. THE PORTABLE CLASSROOMS WILL SERVE AS AN INTERIM LOCATION FOR THE MANOA PUBLIC LIBRARY AND REMAIN ON THE NOELANI CAMPUS FOR THE USE OF THE SCHOOL AFTER THE WORK ON THE MANOA PUBLIC LIBRARY IS COMPLETED.			
		PLANS		10	
		DESIGN		40	
		CONSTRUCTION		500	
		EQUIPMENT		50	
		TOTAL FUNDING	AGS	600	C
113.	P70126	MCCULLY-MOILILI PUBLIC LIBRARY, AIR CONDITIONING, OAHU			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPAIR OR REPLACE THE MCCULLY-MOILILI PUBLIC LIBRARY AIR CONDITIONING SYSTEM.			
		PLANS		1	
		DESIGN		24	
		CONSTRUCTION		100	
		EQUIPMENT		275	
		TOTAL FUNDING	AGS	400 C	C
113.01.		NANAKULI PUBLIC LIBRARY, OAHU			
		PLANS FOR A NEW PUBLIC LIBRARY IN NANAKULI, OAHU.			
		PLANS			100
		TOTAL FUNDING	AGS	C	100 C
<b>UOH100 - UNIVERSITY OF HAWAII, MANOA</b>					
114.	M93	UHM, WAAHILA FACULTY HOUSING, OAHU			
		PLANS FOR EXPANDING FACULTY HOUSING AT THE WAAHILA FACULTY HOUSING PROJECT.			
		PLANS		300	
		TOTAL FUNDING	UOH	300 W	W
115.	R10	UHM, ENCLOSURE OF COURTYARDS FOR RESEARCH LABORATORIES, OAHU			
		PLANS FOR A FEASIBILITY STUDY OF ENCLOSING EXISTING BUILDING COURTYARDS FOR THE PURPOSE OF INCREASING LABORATORY RESEARCH SPACE AT THE UNIVERSITY OF HAWAII AT MANOA.			
		PLANS		500	
		TOTAL FUNDING	UOH	500 W	W
116.	223	UHM, CAMPUS CENTER RENOVATION AND ADDITION, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND ADDITION TO THE CAMPUS CENTER COMPLEX.			
		PLANS		1	2
		DESIGN		1,499	3
		CONSTRUCTION		7,000	32,877
		EQUIPMENT			3,001
		TOTAL FUNDING	UOH	1,500 B	B
			UOH	7,000 C	7,883 C
			UOH	E	28,000 E
117.	697	UHM, KOMOHANA AGRICULTURAL COMPLEX, HAWAII			
		PLANS AND DESIGN FOR PHASE II OF THE KOMOHANA AGRICULTURAL COMPLEX.			
		PLANS		1	
		DESIGN		763	
		TOTAL FUNDING	UOH	764 C	C



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
117.01.	M94	UHM, ENERGY CONSERVATION MODIFICATIONS - AIR CONDITIONING RETROFITS, OAHU			
		DESIGN AND CONSTRUCTION FOR MODIFICATION OF AIR CONDITIONING SYSTEMS. PROJECT TO INCLUDE RETROFIT OF EXISTING AIR CONDITIONING EQUIPMENT FOR ENERGY CONSERVATION MEASURES.			
		DESIGN			300
		CONSTRUCTION			2,200
		TOTAL FUNDING	UOH	C	2,500 C
117.02.	300	UHM, WOMEN'S LOCKER ROOM IMPROVEMENTS FOR TITLE IX COMPLIANCE, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS TO THE WOMEN'S LOCKER ROOM. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		DESIGN			250
		CONSTRUCTION			2,000
		EQUIPMENT			345
		TOTAL FUNDING	UOH	C	2,595 C
117.03.		UHM, COOKE FIELD IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO COOKE FIELD AND THE SURROUNDING AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			500
		CONSTRUCTION			725
		TOTAL FUNDING	UOH	C	1,225 C
117.04.		UHM, LES MURAKAMI STADIUM, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION OF THE TRAINING ROOM.			
		PLANS			1
		DESIGN			35
		CONSTRUCTION			300
		EQUIPMENT			50
		TOTAL FUNDING	UOH	C	386 C
117.05.		UHM, NEW CLASSROOM BUILDING, OAHU			
		PLANS AND DESIGN FOR A NEW CLASSROOM BUILDING.			
		PLANS			1
		DESIGN			7,517
		TOTAL FUNDING	UOH	C	7,518 C
117.06.		UHM, REGIONAL BIOCONTAINMENT LABORATORY, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A REGIONAL BIOCONTAINMENT LABORATORY FACILITY ON OAHU. THIS PROJECT IS DEEMED			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING OR REIMBURSEMENT.			
		PLANS			1,000
		DESIGN			1,000
		CONSTRUCTION			20,000
		TOTAL FUNDING	UOH	C	2,500C
			UOH	N	7,000N
			UOH	A	12,500A
<b>UOH210 - UNIVERSITY OF HAWAII, HILO</b>					
118.	452	UHH, US GEOLOGICAL SURVEY BUILDING, HAWAII			
		PLANS AND DESIGN FOR THE US GEOLOGICAL SURVEY BUILDING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		300	
		DESIGN		3,000	
		TOTAL FUNDING	UOH	3,300N	N
119.	413	UHH, STUDENT SERVICES BUILDING, ADDITION AND RENOVATION, HAWAII			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ADDITION AND RENOVATION OF STUDENT SERVICES BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1,331	
		CONSTRUCTION		24,811	
		EQUIPMENT			1,640
		TOTAL FUNDING	UOH	26,142C	1,640C
120.	346	UHH, NORTH HAWAII EDUCATIONAL RESOURCE CENTER, PHASE IIB, HAWAII			
		CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS FOR THE NORTH HAWAII EDUCATIONAL RESOURCE CENTER.			
		CONSTRUCTION		2,932	
		TOTAL FUNDING	UOH	2,932C	C
121.	350	UHH, COLLEGE OF PHARMACY BUILDING, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR COLLEGE OF PHARMACY BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. PROJECT MAY BE USED FOR TEMPORARY FACILITIES.			
		PLANS		1	
		DESIGN		1,000	
		CONSTRUCTION		4,999	
		TOTAL FUNDING	UOH	6,000C	C
122.	348	UHH, COLLEGE OF PHARMACY BUILDING, HAWAII			
		PLANS AND DESIGN FOR THE COLLEGE OF PHARMACY BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW PERMANENT			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		FACILITY, EQUIPMENT, APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		PLANS		800	
		DESIGN		1,700	
		TOTAL FUNDING	UOH	2,500R	R
<b>UOH700 - UNIVERSITY OF HAWAII, WEST OAHU</b>					
123.	705	UHWO, CAMPUS DEVELOPMENT, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF THE UNIVERSITY OF HAWAII - WEST OAHU. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, CONSTRUCTION OF INFRASTRUCTURE AND NEW FACILITIES, AND ALL PROJECT RELATED COSTS.			
		DESIGN		7,558	
		CONSTRUCTION		127,440	
		EQUIPMENT		2	
		TOTAL FUNDING	UOH	100,000B	B
			UOH	35,000C	C
<b>UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES</b>					
124.	W50	WIN, LIBRARY AND LEARNING CENTER, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LIBRARY AND RESOURCES CENTER AT WINDWARD COMMUNITY COLLEGE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		41,577	
		EQUIPMENT		1	
		TOTAL FUNDING	UOH	41,579C	C
125.	505	CCS, TEMPORARY FACILITIES FOR NURSING PROGRAM, STATEWIDE			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TEMPORARY FACILITIES FOR NURSING PROGRAMS AT LEEWARD, MAUI, HAWAII, AND KAUAI COMMUNITY COLLEGES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		665	
		CONSTRUCTION		6,171	
		EQUIPMENT		1	
		TOTAL FUNDING	UOH	6,837C	C
126.	A32	HON, ADVANCED TECHNOLOGY TRAINING CENTER, OAHU			
		DESIGN FOR AN ADVANCED TECHNOLOGY TRAINING CENTER. PROJECT TO INCLUDE SCIENCE PROGRAM REQUIREMENTS, GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF A NEW FACILITY, EQUIPMENT, APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		DESIGN		3,494	
		TOTAL FUNDING	UOH	3,494C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
127.	A33	HON, PACIFIC AEROSPACE TRAINING CENTER, REROOF HANGAR 111, OAHU			
		DESIGN AND CONSTRUCTION FOR THE REROOFING OF HANGAR 111 FOR THE PACIFIC AEROSPACE TRAINING CENTER.			
		DESIGN		320	
		CONSTRUCTION		2,968	
		TOTAL FUNDING	UOH	3,288 C	C
127.01.		HAW, MANONO CAMPUS AND WEST HAWAII EDUCATION CENTER DEVELOPMENTS, HAWAII			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING FACILITIES AT HAWAII COMMUNITY COLLEGE MANONO CAMPUS AND SITE AND INFRASTRUCTURE IMPROVEMENTS FOR THE WEST HAWAII EDUCATION CENTER. PROJECT TO RENOVATE EXISTING FACILITIES, DEVELOP INFRASTRUCTURE, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		PLANS			88
		DESIGN			3,862
		CONSTRUCTION			7,256
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	11,207 C
127.02.		MAU, SCIENCE BUILDING, MAUI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SCIENCE BUILDING AT MAUI COMMUNITY COLLEGE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			24,998
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	25,000 C
127.03.		KUALOA-HEEIA ECUMENICAL YOUTH PROJECT, OAHU			
		DESIGN AND CONSTRUCTION TO UPGRADE THE INFRASTRUCTURE OF THE KAHALU'U FACILITY. THIS PROJECT QUALIFIES FOR A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN			50
		CONSTRUCTION			150
		TOTAL FUNDING	UOH	C	200 C

UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT

128.	536	SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND OTHER CODE REQUIREMENTS.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		PLANS			1
		DESIGN		1,490	389
		CONSTRUCTION		16,442	1,100
		TOTAL FUNDING	UOH	17,933 C	1,489 C
129.	541	SYS, CAPITAL RENEWAL AND DEFERRED MAINTENANCE, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CAPITAL RENEWAL AND DEFERRED MAINTENANCE PROJECTS AT THE UNIVERSITY OF HAWAII. PROJECT TO INCLUDE REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RENOVATIONS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES.			
		PLANS		500	500
		DESIGN		2,250	4,800
		CONSTRUCTION		29,316	53,210
		EQUIPMENT		1	1
		TOTAL FUNDING	UOH	32,067 C	58,511 C
129.01.		SYS, INFORMATION TECHNOLOGY BUILDING, OAHU			
		PLANS AND DESIGN FOR AN INFORMATION TECHNOLOGY AND EMERGENCY OPERATIONS CENTER BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, AND ALL PROJECT RELATED COSTS.			
		PLANS			1
		DESIGN			3,791
		TOTAL FUNDING	UOH	C	3,792 C
<b>H. CULTURE AND RECREATION</b>					
<b>LNR802 - HISTORIC PRESERVATION</b>					
1.	P70135	CENTRAL UNION CHURCH, OAHU			
		CONSTRUCTION FOR CENTRAL UNION CHURCH FACILITY IMPROVEMENTS. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		125	
		TOTAL FUNDING	LNR	125 C	C
2.	P70136	KAWAIAHAO CHURCH, OAHU			
		CONSTRUCTION FOR IMPROVEMENTS FOR THE KAWAIAHAO CHURCH CAMPUS. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		250	
		TOTAL FUNDING	LNR	250 C	C
3.	P70137	KONA HISTORICAL SOCIETY, HAWAII			
		DESIGN AND CONSTRUCTION FOR FACILITY DEVELOPMENT OF AN ORIENTATION			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		BUILDING. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		99	
		TOTAL FUNDING	LNR	100 C	C
<b>LNR804 - FOREST AND OUTDOOR RECREATION</b>					
4.	D00B	IMPROVEMENTS TO DIVISION OF FORESTRY AND WILDLIFE FACILITIES, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION OF BRIDGES, ROADS, INTERPRETIVE CENTERS, VIEWING AREAS, AND RESTROOMS.			
		PLANS		15	
		DESIGN		75	
		CONSTRUCTION		160	250
		TOTAL FUNDING	LNR	250 C	250 C
5.	P70138	KAUAI PLANNING AND ACTION ALLIANCE, INC., KAUAI			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TRAIL RESTORATION AND RECONSTRUCTION AT THE NA PALI COAST WILDERNESS STATE PARK AND REBUILDING OF THE CIVILIAN CONSERVATION CORPS CAMP AT KOKE'E STATE PARK. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,222	
		EQUIPMENT		1	
		TOTAL FUNDING	LNR	1,225 C	C
5.01.	D00D	WARNING AND INFORMATIONAL SIGNAGE AT DIVISION OF FORESTRY AND WILDLIFE FACILITIES, STATEWIDE			
		CONSTRUCTION FOR WARNING AND INFORMATIONAL SIGNAGE AT DIVISION OF FORESTRY AND WILDLIFE FACILITIES.			
		CONSTRUCTION			150
		TOTAL FUNDING	LNR	B	150 B
5.02.	D00F	MAUNA KEA COMPOSTING TOILETS, HAWAII			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MAUNA KEA COMPOSTING TOILETS.			
		PLANS			1
		DESIGN			2
		CONSTRUCTION			47
		EQUIPMENT			200
		TOTAL FUNDING	LNR	B	250 B

**LNR806 - PARKS ADMINISTRATION AND OPERATION**

6. F11A IOLANI PALACE STATE MONUMENT, OAHU  
CONSTRUCTION FOR AIR CONDITIONING, CLIMATE CONTROL, AND RELATED

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		IMPROVEMENTS TO PRESERVE HISTORIC AND CULTURAL ARTIFACTS.			
		CONSTRUCTION		4,500	
		TOTAL FUNDING	LNR	4,500 C	C
7.	F37A	DIAMOND HEAD STATE MONUMENT, OAHU			
		CONSTRUCTION OF ROCKFALL MITIGATION MEASURES AND RELATED IMPROVEMENTS.			
		CONSTRUCTION		2,000	
		TOTAL FUNDING	LNR	2,000 C	C
8.	H-46	LUMP SUM CIP - STATE PARKS FACILITY IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR STATE PARKS IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS.			
		PLANS		1	
		DESIGN		249	450
		CONSTRUCTION		4,750	2,050
		TOTAL FUNDING	LNR	5,000 C	2,500 C
9.	F77A	MACKENZIE STATE PARK, VARIOUS IMPROVEMENTS, HAWAII			
		DESIGN AND CONSTRUCTION FOR COMFORT STATION AND PARK IMPROVEMENTS AT MACKENZIE STATE PARK.			
		DESIGN		250	
		CONSTRUCTION		1,000	
		TOTAL FUNDING	LNR	1,250 C	C
10.	P70139	LAVA TREE STATE MONUMENT, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE COMFORT STATION, PARKING LOT, LANDSCAPING, PAVILION, PATHWAYS, INTERPRETIVE DISPLAYS, AND PICNIC AREAS AT LAVA TREE STATE MONUMENT.			
		PLANS		1	
		DESIGN		199	
		CONSTRUCTION		1,800	
		TOTAL FUNDING	LNR	2,000 C	C
11.	P70140	MANUKA STATE WAYSIDE, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR COMFORT STATION, PARKING LOT, LANDSCAPING, AND PICNIC AREA IMPROVEMENTS AT MANUKA STATE WAYSIDE.			
		PLANS		1	
		DESIGN		99	
		CONSTRUCTION		900	
		TOTAL FUNDING	LNR	1,000 C	C
12.	P70141	DIAMOND HEAD STATE MONUMENT, TRAIL SYSTEM IMPROVEMENTS, OAHU			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		PLANS, DESIGN, AND CONSTRUCTION FOR TRAIL SYSTEM IMPROVEMENTS TO IMPROVE THE LOAD DISTRIBUTION AND CARRYING CAPACITY OF THE TRAIL SYSTEM AT DIAMOND HEAD STATE MONUMENT.			
		PLANS		100	
		DESIGN		200	
		CONSTRUCTION		4,100	
		TOTAL FUNDING	LNR	4,400 C	C
13.	P70142	HAWAII NATURE CENTER, KAUAI			
		DESIGN AND CONSTRUCTION FOR LEARNING CENTER DEVELOPMENT. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		499	
		TOTAL FUNDING	LNR	500 C	C
14.	P70143	LANAKILA REHABILITATION CENTER, OAHU			
		DESIGN AND CONSTRUCTION FOR RENOVATION OF THE LANAKILA WAHIAWA CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		299	
		TOTAL FUNDING	LNR	300 C	C
14.01.	H54	STATE PARKS ENERGY EFFICIENCY AND CONSERVATION IMPROVEMENTS, STATEWIDE			
		DESIGN OF ENERGY EFFICIENCY, CONSERVATION AND OTHER RELATED IMPROVEMENTS, STATEWIDE.			
		DESIGN			250
		TOTAL FUNDING	LNR	C	250 C
14.02.		WAAHILA PARK ACCESS ROAD, OAHU			
		CONSTRUCTION FOR REPAIR OF THE PARK ACCESS ROAD FROM THE END OF RUTH PLACE TO THE PARK ENTRANCE.			
		CONSTRUCTION			125
		TOTAL FUNDING	LNR	C	125 C

LNR801 - OCEAN-BASED RECREATION

15.	299D	LUMP SUM CIP - FERRY SYSTEM IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT LAHAINA, MANELE, KAUNAKAKAI AND MAALAEA SMALL BOAT HARBORS TO SUPPORT EXISTING FERRY OPERATIONS, INCLUDING PIERS, LOADING DOCKS, DREDGING, PAVING, UTILITIES, COMFORT STATIONS, ADMINISTRATIVE OFFICES, COVERED WAITING AREAS, AND OTHER BERTHING OR SHORE FACILITIES. PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		PLANS		1,700	
		DESIGN		1,950	
		CONSTRUCTION		8,870	17,500
		TOTAL FUNDING	LNR	3,920C	4,300C
			LNR	8,600N	13,200N
16.	299E	LUMP SUM CIP - IMPROVEMENTS TO HARBOR FACILITIES, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT VARIOUS BOATING FACILITIES TO INCLUDE CESSPOOL CLOSURES, PIERS, LOADING DOCKS, UTILITIES, BOAT RAMPS, RESTROOMS, PARKING AREAS, STRUCTURES, DREDGING, AND OTHER RELATED WORK. WORK TO INCLUDE, BUT IS NOT LIMITED TO, PORT ALLEN CESSPOOL/ WASTEWATER SYSTEM IMPROVEMENTS, WAILOA SMALL BOAT HARBOR DREDGING AND POHOIKI BOAT RAMP IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/ OR REIMBURSEMENT.			
		DESIGN		1,100	1,100
		CONSTRUCTION		10,120	5,520
		TOTAL FUNDING	LNR	C	5,000C
			LNR	10,000D	1,000D
			LNR	1,220N	620N
17.	B45B	MAALAEA SMALL BOAT HARBOR, MAUI			
		LAND ACQUISITION FOR APPROXIMATELY 1.137 ACRES LOCATED AT THE CORNER OF HAUOLI AND MAALAEA ROAD, MAUI.			
		LAND		6,000	
		TOTAL FUNDING	LNR	6,000C	C
18.	P70144	MALA BOAT LAUNCHING RAMP, MAUI			
		DESIGN OF IMPROVEMENTS AND REPAIRS TO THE BOAT LAUNCHING RAMP AND RELATED WORK.			
		DESIGN		200	
		TOTAL FUNDING	LNR	200C	C
19.	P70145	KEEHI SMALL BOAT HARBOR IMPROVEMENTS, PHASE I, OAHU			
		DESIGN AND CONSTRUCTION TO REPLACE DETERIORATED PIERS AND RELATED WORK.			
		DESIGN		100	
		CONSTRUCTION		1,400	
		TOTAL FUNDING	LNR	1,500C	C
20.	P70146	HANA BOAT RAMP IMPROVEMENTS, MAUI			
		DESIGN AND CONSTRUCTION FOR REVETMENT IMPROVEMENTS, NEW LOADING DOCK, IMPROVEMENTS TO BOAT RAMP, NEW WASHDOWN AREA, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		1	
		CONSTRUCTION		905	
		TOTAL FUNDING	LNR	906C	C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009	
21.	P70147	WAIANAE SMALL BOAT HARBOR, OAHU DESIGN AND CONSTRUCTION FOR PARKING LOT IMPROVEMENTS, REPLACEMENT OF THE MAIN WALKWAYS, PIERS, AND LAUNCH RAMPS, AND OTHER RELATED WORK.				
		DESIGN			300	
		CONSTRUCTION			1,400	
		TOTAL FUNDING	LNR		1,700C	C
22.	P70148	POHOIKI BOAT RAMP AND LOADING DOCK, HAWAII CONSTRUCTION FOR THE REPLACEMENT OF THE BOAT LAUNCH RAMP AND LOADING DOCK AT POHOIKI BAY.				
		CONSTRUCTION			800	
		TOTAL FUNDING	LNR		800C	C
23.	P70149	MAALAEA SMALL BOAT HARBOR, ELECTRICAL IMPROVEMENTS, MAUI DESIGN AND CONSTRUCTION FOR VARIOUS ELECTRICAL REPAIRS AND IMPROVEMENTS AT MAALAEA SMALL BOAT HARBOR.				
		DESIGN			1	
		CONSTRUCTION			1,299	
		TOTAL FUNDING	LNR		1,300C	C
24.	P70150	KAWAIIHAE SMALL BOAT HARBOR IMPROVEMENTS, HAWAII DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE NORTHERN PORTION OF KAWAIIHAE SMALL BOAT HARBOR.				
		DESIGN			25	
		CONSTRUCTION			374	
		EQUIPMENT			1	
		TOTAL FUNDING	LNR		400C	C
24.01.		KIKIAOLA LIGHT DRAFT HARBOR, KAUAI CONSTRUCTION FOR THE STATES' PORTION OF DREDGING THE INNER HARBOR BASIN AREA.				
		CONSTRUCTION				1,560
		TOTAL FUNDING	LNR		C	1,560C
24.02.		KEEHI SMALL BOAT HARBOR, OAHU PLANS, DESIGN AND CONSTRUCTION OF A BULKHEAD, PIER, PAD, AND STORM WATER MANAGEMENT SYSTEM AND UTILITIES INSTALLATION AT KEEHI SMALL BOAT HARBOR TO RELOCATE HONOLULU MARINE, LLC, FROM HCDA PROPERTY.				
		PLANS				1
		DESIGN				349
		CONSTRUCTION				3,650
		TOTAL FUNDING	LNR		C	4,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009

AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM

25.	Q104	LUMP SUM HEALTH AND SAFETY, ALOHA STADIUM, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION FOR THE MITIGATION/ELIMINATION OF CONDITIONS THAT MAY BECOME HAZARDOUS TO HEALTH AND SAFETY, INCLUDING REPAIRS, ALTERATIONS, AND IMPROVEMENTS TO THE ALOHA STADIUM TO MEET CODE, SAFETY, AND/OR OPERATIONAL REQUIREMENTS.				
		PLANS			1	1,870
		DESIGN			549	11,330
		CONSTRUCTION			11,880	12,650
		TOTAL FUNDING	AGS		12,430 C	25,850 C

I. PUBLIC SAFETY

PSD404 - WAIAWA CORRECTIONAL FACILITY

1.	20041	WAIAWA CORRECTIONAL FACILITY, WASTEWATER SYSTEM IMPROVEMENTS, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION OF IMPROVEMENTS TO THE WASTEWATER SYSTEM TO REMEDY DEFICIENCIES.				
		PLANS			50	
		DESIGN			185	
		CONSTRUCTION			915	
		TOTAL FUNDING	AGS		1,150 C	C
2.	20042	WAIAWA CORRECTIONAL FACILITY, IMPROVEMENTS TO FACILITY POWER SYSTEM, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION OF IMPROVEMENTS TO FACILITY POWER SYSTEM.				
		PLANS			45	
		DESIGN			65	
		CONSTRUCTION			740	
		TOTAL FUNDING	AGS		850 C	C

PSD900 - GENERAL ADMINISTRATION

3.	P20080	LUMP SUM CIP - REPAIRS, ALTERATIONS, AND IMPROVEMENTS FOR ALL DEPARTMENT OF PUBLIC SAFETY (PSD) PROGRAMS, STATEWIDE				
		PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS, ALTERATIONS, AND IMPROVEMENTS FOR CORRECTIONAL FACILITIES.				
		PLANS			660	
		DESIGN			1,272	
		CONSTRUCTION			7,660	
		TOTAL FUNDING	AGS		9,592 C	C
4.	P20083	PSD GENERAL ADMINISTRATION, ENERGY CONSERVATION PROGRAM PLANNING, STATEWIDE				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO FORMULATE, DEVELOP, AND IMPLEMENT A DEPARTMENTAL ENERGY				

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
		CONSERVATION PROGRAM AT ALL PSD FACILITIES.			
		PLANS		497	
		DESIGN		1	
		CONSTRUCTION		1	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	500 C	
5.	P70151	GENERAL ADMINISTRATION, CORRECTIONAL FACILITIES DEVELOPMENT, HAWAII			
		PLANS AND DESIGN FOR CORRECTIONAL FACILITIES ON THE ISLAND OF HAWAII TO PROVIDE A MINIMUM OF 500 ADDITIONAL IN-STATE BEDS WITH SUPPORT PROGRAM SPACE FOR DRUG TREATMENT AND OTHER REHABILITATIVE SERVICES.			
		PLANS		500	
		DESIGN		4,500	
		TOTAL FUNDING	AGS	5,000 C	
5.01.	P20090	LUMP SUM CIP PROJECTS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR RENOVATIONS, ALTERATIONS AND IMPROVEMENTS AT ALL PSD PROGRAMS, STATEWIDE.			
		PLANS			50
		DESIGN			450
		CONSTRUCTION			2,500
		TOTAL FUNDING	AGS	C	3,000 C
<b>DEF110 - AMELIORATION OF PHYSICAL DISASTERS</b>					
6.	A0201	BIRKHIMER TUNNEL AND SUPPORT FACILITIES, HEALTH AND SAFETY REQUIREMENTS, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE STATE EMERGENCY OPERATING CENTER, BIRKHIMER TUNNEL, AND SUPPORT FACILITIES TO INCLUDE AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE, SPRINKLER SYSTEM, ADDITIONAL INSTALLATION OF CONDUITS, REMOVAL OF OVERHEAD UTILITY LINES, AND OTHER IMPROVEMENTS.			
		PLANS		1	
		DESIGN		200	100
		CONSTRUCTION		100	600
		TOTAL FUNDING	DEF	301 C	700 C
7.	C13	DISASTER WARNING AND COMMUNICATION DEVICES, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT AND UPGRADE OF STATE CIVIL DEFENSE WARNING AND COMMUNICATIONS EQUIPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		PLANS		1	1
		LAND		1	1
		DESIGN		330	330
		CONSTRUCTION		3,900	1,834
		EQUIPMENT		868	434
		TOTAL FUNDING	DEF	5,000C	2,500C
			DEF	100N	100N
8.	P50149	KEAUKAHA JOINT MILITARY CENTER, ARMED FORCES RESERVE CENTER, HILO, HAWAII			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO DESIGN-BUILD A COMPLEX FOR SOLDIERS, AIRMEN, STATE EMPLOYEES, VETERANS, AND RETIREES ON THE ISLAND OF HAWAII. THIS PROJECT WILL ALSO PROVIDE AN EXPANDED PX, LIMITED COMMISSARY, AND OFFICE FOR VETERANS AFFAIRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,483	
		CONSTRUCTION		55,473	330
		EQUIPMENT			6,605
		TOTAL FUNDING	DEF	6,449C	480C
			DEF	50,507N	6,455N
9.	XXX	ARMORY RENOVATIONS, HANAPEPE, KAUAI			
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF THE HANAPEPE ARMORY ROOF, CEILING TILES, FLOORING, HIGH WINDOWS IN ASSEMBLY HALL, EXTERIOR DOORS, PAINTING, AND MISCELLANEOUS AESTHETIC AND OPERATIONAL IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		100	
		CONSTRUCTION		1,000	
		TOTAL FUNDING	DEF	550C	C
			DEF	550N	N
10.	P70152	AMERICAN RED CROSS HAWAII STATE CHAPTER, OAHU			
		CONSTRUCTION FOR RENOVATION OF THE RED CROSS HEADQUARTERS FACILITY. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		125	
		TOTAL FUNDING	DEF	125C	C
10.01.		AMERICAN RED CROSS, HAWAII STATE CHAPTER, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR DISASTER HARDENING OF THE RED CROSS HEADQUARTERS BUILDING, GENERATORS AND FLOOD ABATEMENT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			198
		TOTAL FUNDING	DEF	C	200C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F

K. GOVERNMENT-WIDE SUPPORT

GOV100 - OFFICE OF THE GOVERNOR

1.	G01	PROJECT ADJUSTMENT FUND, STATEWIDE				
		PLANS FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.				
		PLANS			1	1
		TOTAL FUNDING	GOV		1C	1C

BUF101 - DEPARTMENTAL ADMINISTRATION AND BUDGET DIVISION

2.	00-01	HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE				
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUND TO SATISFY THE PROVISIONS OF ACT 14, SPSLH 1995.				
		CONSTRUCTION		50,000		30,000
		TOTAL FUNDING	AGS	50,000C		30,000C
3.	00-02	STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND, STATEWIDE				
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.				
		CONSTRUCTION		291,958		540,593
		TOTAL FUNDING	BUF	291,958C		540,593C
3.01.	BM091	BISHOP MUSEUM, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS AND MAINTENANCE AND OTHER RELATED IMPROVEMENTS AT THE BISHOP MUSEUM.				
		PLANS				10
		DESIGN				10
		CONSTRUCTION				980
		TOTAL FUNDING	AGS		C	1,000C

AGS131 - INFORMATION PROCESSING SERVICES

4.	Q102	LUMP SUM HEALTH AND SAFETY, INFORMATION AND COMMUNICATION SERVICES DIVISION, STATEWIDE				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REPAIRS, UPGRADES AND EXPANSION OF CRITICAL COMMUNICATIONS BACKBONE SYSTEMS, INCLUDING THE STATEWIDE ANUENUE AND HAWAIIAN MICROWAVE SYSTEMS AND THE WINDWARD, NORTH SHORE, AND CENTRAL OAHU RADIO SITES.				
		PLANS		598		24

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		LAND		3	1
		DESIGN		922	125
		CONSTRUCTION		3,801	1,800
		EQUIPMENT		871	950
		TOTAL FUNDING	AGS	6,195 C	2,900 C
<b>LNR101 - PUBLIC LANDS MANAGEMENT</b>					
5.	E00A	WAIKIKI BEACH IMPROVEMENTS, OAHU			
		PLANS AND DESIGN FOR IMPROVEMENTS TO WAIKIKI BEACH.			
		PLANS		500	
		DESIGN		500	
		TOTAL FUNDING	LNR	500B	B
				LNR	R
				LNR	S
6.	J42	DAM ASSESSMENTS, MAINTENANCE AND REMEDIATION, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR ASSESSMENTS, MAINTENANCE, AND REMEDIATION OF DAMS UNDER THE JURISDICTION OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES. SPECIAL FUNDS FROM THE SPECIAL LAND AND DEVELOPMENT FUND.			
		PLANS		1,140	
		DESIGN		2,540	
		CONSTRUCTION		50	16,800
		TOTAL FUNDING	LNR	3,730B	2,270B
				LNR	C
					14,530C
7.	J42B	ROCKFALL MITIGATION, KAUAI			
		DESIGN AND CONSTRUCTION FOR ROCKFALL MITIGATION AT VARIOUS LOCATIONS, KAUAI.			
		DESIGN		100	
		CONSTRUCTION		700	
		TOTAL FUNDING	LNR	800C	C
8.	J43A	EWA AND KEKAHA PESTICIDE REMEDIATION, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION TO MITIGATE RISK OF EXPOSURE TO HAZARDOUS MATERIALS AT FORMER PESTICIDE MIXING SITES IN EWA, OAHU AND KEKAHA, KAUAI.			
		PLANS		80	
		DESIGN		20	
		CONSTRUCTION		150	
		TOTAL FUNDING	LNR	250C	C
9.	J43B	LAND MAINTENANCE BASEYARD, HALAWA, OAHU			
		DESIGN AND CONSTRUCTION FOR BASEYARD FOR LAND MAINTENANCE CREW.			
		DESIGN		50	
		CONSTRUCTION		560	
		TOTAL FUNDING	LNR	610C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F	
<b>AGS221 - PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION</b>						
10.	E109	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.				
		PLANS		6,896	6,946	
		LAND		1	1	
		DESIGN		1	1	
		CONSTRUCTION		1	1	
		EQUIPMENT		1	1	
		TOTAL FUNDING	AGS	6,900 C	6,950 C	
11.	P60131	ENERGY CONSERVATION IMPROVEMENTS, STATEWIDE				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR DEVELOPMENT AND IMPLEMENTATION OF A COMPREHENSIVE ENERGY CONSERVATION PLAN TO MAXIMIZE ENERGY EFFICIENCY IN PUBLIC FACILITIES AND OPERATIONS.				
		PLANS		1,700	1,350	
		DESIGN		1,400	310	
		CONSTRUCTION		7,890	3,690	
		EQUIPMENT		10	5	
		TOTAL FUNDING	AGS	11,000 C	5,355 C	
12.	Q101	LUMP SUM MAINTENANCE OF EXISTING FACILITIES, PUBLIC WORKS DIVISION, STATEWIDE				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND MAINTENANCE OF PUBLIC FACILITIES AND SITES, STATEWIDE. PROJECTS MAY INCLUDE ROOFING, OTHER REPAIRS, AND IMPROVEMENTS.				
		PLANS		300	300	
		LAND		1	1	
		DESIGN		700	700	
		CONSTRUCTION		3,600	3,600	
		EQUIPMENT		399	399	
		TOTAL FUNDING	AGS	5,000 C	5,000 C	
13.	Q106	KALANIMOKU BUILDING, EMERGENCY OPERATING CENTER, OAHU				
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EMERGENCY OPERATING CENTER AT KALANIMOKU BUILDING.				
		DESIGN		175		
		CONSTRUCTION		1,225		
		EQUIPMENT		1,100		
		TOTAL FUNDING	AGS	2,500 C	C	



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F	
14.	Q109	KEAKEALANI STATE OFFICE BUILDING REPAIR HAUKAPILA STREET, HAWAII DESIGN AND CONSTRUCTION FOR REPAIR AND RESURFACING OF HAUKAPILA STREET.				
		DESIGN			70	
		CONSTRUCTION			430	
		TOTAL FUNDING	AGS		500 C	C
15.	P70153	HAWAII ARTS CENTER FOR YOUTH, OAHU PLANS AND DESIGN FOR A PERFORMING ARTS CENTER FOR CHILDREN AND YOUTH. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		PLANS			1	
		DESIGN			49	
		TOTAL FUNDING	AGS		50 C	C
16.	P70154	HAWAII THEATRE CENTER, OAHU CONSTRUCTION FOR IMPROVEMENTS TO FACILITIES OWNED BY THE HAWAII THEATRE CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION			250	
		TOTAL FUNDING	AGS		250 C	C
17.	P70155	JAPANESE CULTURAL CENTER OF HAWAII, OAHU CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO THE JAPANESE CULTURAL CENTER. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION			325	250
		TOTAL FUNDING	AGS		325 C	250 C
18.	P70156	FRIENDS OF WAIPAHA CULTURAL GARDEN PARK, OAHU CONSTRUCTION FOR IMPROVEMENTS AT HAWAII'S PLANTATION VILLAGE. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION			250	
		TOTAL FUNDING	AGS		250 C	C
19.	P70157	HAWAII HERITAGE CENTER, OAHU DESIGN AND CONSTRUCTION FOR FACILITY DEVELOPMENT. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		DESIGN			1	
		CONSTRUCTION			299	
		TOTAL FUNDING	AGS		300 C	C
20.	P70158	HAWAII PERFORMING ARTS COMPANY, OAHU CONSTRUCTION AND EQUIPMENT FOR FACILITY RENOVATION. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION			149	
		EQUIPMENT			1	
		TOTAL FUNDING	AGS		150 C	C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2007-2008 F	FISCAL M YEAR O 2008-2009 F
21.	P70159	MAUI COMMUNITY ARTS AND CULTURAL CENTER, MAUI DESIGN AND CONSTRUCTION FOR FACILITY RENOVATION AND EXPANSION. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	1
		CONSTRUCTION		249	249
		TOTAL FUNDING	AGS	250C	250C
<b>SUB201 - CITY AND COUNTY OF HONOLULU</b>					
22.	P70160	EMS METRO STATION, OAHU PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PERMANENT FACILITY TO HOUSE METRO-1 AND MAKIKI AMBULANCES.			
		PLANS		1	
		LAND		1	
		DESIGN		597	
		CONSTRUCTION		2,000	
		EQUIPMENT		1	
		TOTAL FUNDING	CCH	2,600C	C
23.	P70161	WAHIAWA TRANSIT CENTER, OAHU DESIGN AND CONSTRUCTION OF A PARKING STRUCTURE FOR THE TRANSIT CENTER.			
		DESIGN		250	
		CONSTRUCTION		2,250	
		TOTAL FUNDING	CCH	2,500C	C
23.01.		NIU VALLEY MIDDLE SCHOOL, OAHU DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PLAYGROUND EQUIPMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			20
		CONSTRUCTION			179
		EQUIPMENT			1
		TOTAL FUNDING	CCH	C	200C
<b>SUB301 - COUNTY OF HAWAII</b>					
24.	P70162	NORTH KONA WATER SYSTEM IMPROVEMENTS, HAWAII DESIGN AND CONSTRUCTION FOR WATER SYSTEM IMPROVEMENTS TO BENEFIT AFFORDABLE HOUSING AND DHHL PROJECTS IN NORTH KONA.			
		DESIGN		500	
		CONSTRUCTION		11,500	
		TOTAL FUNDING	COH	12,000U	U
<b>SUB401 - COUNTY OF MAUI</b>					
25.	P70163	BIKE AND PEDESTRIAN TRAIL, MAUI DESIGN AND CONSTRUCTION FOR A BIKE AND PEDESTRIAN TRAIL ALONG THE NORTH/SOUTH COLLECTOR ROAD RESERVE CORRIDOR.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2007-2008	FISCAL YEAR 2008-2009
		DESIGN		20	
		CONSTRUCTION		80	
		TOTAL FUNDING	COM	100C	C
25.01.		UPCOUNTRY MAUI RESERVOIR, MAUI			
		PLANS, DESIGN AND CONSTRUCTION FOR A 300 MILLION GALLON RESERVOIR IN UPCOUNTRY MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS			875
		DESIGN			1,000
		CONSTRUCTION			1,875
		TOTAL FUNDING	COM	C	3,749C
			COM	N	1N

SUB501 - COUNTY OF KAUAI

25.02.		BALL FIELD AND RECREATIONAL FACILITIES LIGHT SYSTEM RETROFIT, KAUAI			
		DESIGN AND CONSTRUCTION TO RETROFIT THE LIGHT SYSTEMS AT VARIOUS BALL FIELDS AND RECREATIONAL FACILITIES THROUGHOUT THE COUNTY OF KAUAL.			
		DESIGN			121
		CONSTRUCTION			1,089
		TOTAL FUNDING	COK	C	1,210C"

SECTION 6. Part V, Act 213, Session Laws of Hawaii 2007, is amended:

(1) By adding a new section to read as follows:

“SECTION 130.1. Provided that of the general obligation bond fund appropriation for native resources and fire protection program (LNR 402), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be expended for the Kawai Nui Marsh habitat restoration project; and provided further that no funds shall be expended unless one or more of the following conditions are met:

- (1) The State’s acceptance of the fee title to Kawai Nui Marsh defined as lot 3, as shown on land division parcel map file no. 18-3-3-13, approximately 693 acres, from its current owner, the city and county of Honolulu, concurrent with the execution of a memorandum of agreement between the State and city wherein the city agrees to remediate or remove, as appropriate and to the extent the city is responsible, environmental conditions within lot 3 that are identified in a phase II site assessment to be conducted by the State following the State’s acceptance of fee title;
- (2) A right of entry agreement between the State and the city and county of Honolulu; and
- (3) The State and the United States Army Corps of Engineers execute a project partnership agreement relating to the Kawai Nui Marsh habitat restoration project no later than September 30, 2008.”

(2) By adding a new section to read as follows:

“SECTION 131.1. Provided that of the general obligation bond fund appropriation for services to veterans (DEF 112), the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used for improvements

to veteran’s cemeteries throughout the state; and provided further that each such cemetery shall receive project funding.”

(3) By adding a new section to read as follows:

“SECTION 131.2. Provided that of the general obligation bond fund appropriation for the University of Hawaii, system wide support (UOH 900), the sum of \$3,792,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used for planning of an information technology building that shall also serve as a data recovery center for the department of accounting and general services; provided further that such planning shall include a study of the feasibility of the university entering into public-private partnerships to build a facility, thereby reducing the cost to the University; and provided further that the feasibility study shall consider inclusion of public and private uses, whether by lease of space or sale of technology services by the university to private entities; and provided further that the university shall provide a report on the status of planning and the results of the feasibility study to the legislature no later than 20 days prior to the convening of the 2009 regular session.”

(4) By adding a new section to read as follows:

“SECTION 131.3. Provided that of the general obligation bond fund appropriation for the University of Hawaii, system wide support (UOH 900), the sum of \$58,511,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used for capital renewal and deferred maintenance, statewide; provided further that of the total sum:

(1)<sup>10</sup> \$3,000,000 or so much thereof as may be required for fiscal year 2008-2009 shall be used for upgrades to athletic facilities at the University of Hawaii at Manoa; and

(2)<sup>10</sup> \$5,000,000 or so much thereof as may be required for fiscal year 2008-2009 shall be used for minor capital improvements for the campuses of the community college system.”

(5) By adding a new section to read as follows:

“SECTION 131.4. Provided that of the general obligation bond fund appropriation for ocean-based recreation (LNR 801), the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 shall be used for improvements to small boat harbor facilities, statewide; provided further that of the total sum:

(1) \$2,500,000 shall be used for pier and utility improvements at Lahaina small boat harbor, Maui;

(2) \$2,000,000 shall be used for pier improvements at Port Allen small boat harbor, Kauai.”

(6) By adding a new section to read as follows:

“SECTION 134.1. Act 328, Session Laws of Hawaii 1997, section 140A, as amended by Act 116, Session Laws of Hawaii 1998, section 5 is amended, by amending Item C-113 to read as follows:

“§239 TRAFFIC MANAGEMENT SYSTEM, [INTERSTATE H-1, H-2, AND KALANIANA'OLE HIGHWAY,] OAHU

CONSTRUCTION OF A TRAFFIC MANAGEMENT SYSTEM WHICH INCLUDES THE INSTALLATION OF VARIABLE & CHANGEABLE MESSAGE SIGNS, LOOP DETECTORS, EMERGENCY TELEPHONES, TRAFFIC SIGNAL SYSTEMS, FIBER-OPTIC CABLES, CAMERAS (CCTV), TRAFFIC CONTROL CENTER, AND PROCUREMENT OF COMPUTER HARDWARE AND SOFTWARE. THIS PROJECT IS DEEMED NECESSARY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

<u>CONSTRUCTION</u>			<u>4,000</u>
<u>TOTAL FUNDING</u>	<u>TRN</u>	<u>E</u>	<u>800 E</u>
	<u>TRN</u>	<u>N</u>	<u>3,200 N<sup>2</sup>”</u>

(7) By adding a new section to read as follows:

“SECTION 134.2. Act 200, Session Laws of Hawaii 2003, section 77, as amended by Act 41, Session Laws of Hawaii 2004, section 5 is amended, by amending Item C-77.02 to read as follows:

“V063 KAHULUI AIRPORT ACCESS ROAD, MAUI

CONSTRUCTION FOR A PORTION OF THE NEW ACCESS ROAD TO KAHULUI AIRPORT FROM THE VICINITY OF PUUNENE AVENUE TO HANA HIGHWAY. INCLUDES AN [AT-GRADE] INTERSECTION AT HANA HIGHWAY, STRIPING, LANDSCAPING, DRAINAGE, HIGHWAY LIGHTING, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

<u>CONSTRUCTION</u>			<u>19,000</u>
<u>TOTAL FUNDING</u>	<u>TRN</u>	<u>E</u>	<u>3,800 E</u>
	<u>TRN</u>	<u>N</u>	<u>15,200 N<sup>2</sup>”</u>

(8) By adding a new section to read as follows:

“SECTION 134.3. Act 178, Session Laws of Hawaii 2005, section 85, as amended by Act 160, Session Laws of Hawaii 2006, section 5 is amended:

(1) By amending item B-6.01 to read as follows:

“HAWAII UNITED OKINAWA ASSOCIATION, OAHU

LAND ACQUISITION [FOR] RELATED TO THE EXPANSION OF THE HAWAII OKINAWA CENTER IN WAIPIO GENTRY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

<u>LAND</u>		<u>1,600</u>
<u>TOTAL FUNDING</u>	<u>AGS</u>	<u>1,600 C<sup>2</sup>”</u>

(2) By amending item G-93.01 to read as follows:

“WAIANA E HIGH SCHOOL, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR AIR CONDITIONING AND POWER UPGRADES [FOR BUILDINGS A&B] FOR VARIOUS BUILDINGS AT WAIANA E HIGH SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

<u>PLANS</u>		<u>50</u>
<u>DESIGN</u>		<u>50</u>
<u>CONSTRUCTION</u>		<u>1,900</u>
<u>TOTAL FUNDING</u>	<u>EDN</u>	<u>2,000 B<sup>2</sup>”</u>

(9) By amending section 134, Item (6) to read as follows:

“(6) By amending Item [C-124.02] C-117 to read:

“V053 HONOAPIILANI HIGHWAY, [REVTMENT] HIGHWAY SHORELINE PROTECTION AT LAUNIUPOKO, MAUI

CONSTRUCTION FOR THE REVTMENT AND/OR HIGHWAY PREALIGNMENT AT LAUNIUPOKO TO PROTECT THE HONOAPIILANI HIGHWAY FROM SHORELINE EROSION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

<u>CONSTRUCTION</u>		<u>[1,800] 1,801</u>
<u>TOTAL FUNDING</u>	<u>TRN</u>	<u>E 1,800 E</u>
		<u>N 1 N<sup>2</sup>”</u>

(10) By amending section 138 to read as follows:

“SECTION 138. Any law to the contrary notwithstanding, the appropriations under Act 328, Session Laws of Hawaii 1997, section 140A, as amended and renumbered by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-5	\$302,200 C
A-5	700,000 N
C-10	[\$]480,094 N
C-18	192,615 N
C-63A	112,744 N”

(11) By amending section 139 to read as follows:

“SECTION 139. Any law to the contrary notwithstanding, the appropriations under Act 91, Session Laws of Hawaii 1999, section 64, as amended and renumbered by Act 281, Session Laws of Hawaii 2000, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-16A	\$580,000 C
C-5A	[\$] 900,000 N
C-5B	30,226 N
C-5E	4,000,000 N”

(12) By amending section 140 to read as follows:

“SECTION 140. Any law to the contrary notwithstanding, the appropriations under Act 259, Session Laws of Hawaii 2001, section 91, as amended and renumbered by Act 177, Session Laws of Hawaii 2002, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-10	\$ 1,092 N
A-17A	[\$ -5,400,000] 4,860,253 C
H-21B	2,483,580 D”

(13) By amending section 141 to read as follows:

“SECTION 141. Any law to the contrary notwithstanding, the appropriations under Act 200, Session Laws of Hawaii 2003, section 77, as amended and renumbered by Act 41, Session Laws of Hawaii 2004, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-2	\$ 3,800,000 E
C-2	6,000,000 N
I-1.03	11,898,000 C
K-7	1,557,000 C
K-8	1,773,000 C”

(14) By amending section 142 to read as follows:

“SECTION 142. Any law to the contrary notwithstanding, the appropriations under Act 178, Session Laws of Hawaii 2005, section 85, as amended and renumbered by Act 160, Session Laws of Hawaii 2006, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-6.03</u>	<u>\$540,000 C</u>
<u>A-6.04</u>	<u>50,000 C</u>
<u>A-6.08</u>	<u>400,000 C</u>
<u>A-10</u>	<u>2,977 C</u>
<u>B-2</u>	<u>[\$] 2,000 C</u>
<u>C-6</u>	<u>7,035,000 N</u>
<u>C-17</u>	<u>7,000,000 N</u>
<u>E-4</u>	<u>1,200,000 C</u>
<u>E-12.03</u>	<u>350,000 C</u>
<u>F-17</u>	<u>500,000 C</u>
<u>F-11.06</u>	<u>1,500,000 [B] C</u>
<u>G-83</u>	<u>285,000 B</u>
<u>G-107.01</u>	<u>200,000 C</u>
<u>G-113.02</u>	<u>12,500,000 A</u>
<u>G-120</u>	<u>16,207,000 C</u>
<u>G-124.03</u>	<u>360,000 C</u>
<u>H-6</u>	<u>260,000 C</u>
<u>H-16</u>	<u>346,962 C</u>
<u>I-1.02</u>	<u>15,350,000 C</u>
<u>K-3</u>	<u>[285,000] 230,685,000 C</u>
<u>K-4</u>	<u>1,200,000 C</u>
<u>K-7.01</u>	<u>2,000,000 C</u>
<u>K-9</u>	<u>9,600,000 C</u>
<u>K-15.05</u>	<u>5,175,000 C</u>

(15) By adding a new section to read as follows:

“SECTION 142.1 Any law to the contrary notwithstanding, the appropriation under Act 96, Session Laws of Hawaii 2006, section 2, in the amount of \$4,400,000 or balance thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, is hereby lapsed.”

SECTION 7. Part VI, Act 213, Session Laws of Hawaii 2007, is amended by adding a new section to read as follows:

“SECTION 147.1. HAWAIIAN HOME LANDS REVENUE BONDS. The department of Hawaiian home lands is authorized to issue Hawaiian home lands revenue bonds for Hawaiian home lands capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such Hawaiian home lands revenue bonds during the estimated period of construction of the capital improvements program project for which such Hawaiian home lands revenue bonds are issued, to establish, maintain, or increase reserves for the Hawaiian home lands revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of such bonds. The aforementioned Hawaiian home lands revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from Hawaiian home lands, revenues from available lands as defined in section 203 of the Hawaii Homes Commission Act, 1920, and related facilities under the ownership of the State or operated

and managed by the department or such parts of either thereof as the department may determine, including rents and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of Hawaiian home lands, available lands as defined in section 203 of the Hawaii Homes Commission Act, 1920, and related facilities. The expenses of the issuance of such Hawaiian home lands revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the Hawaiian home lands special fund.

The governor, in the governor's discretion, is authorized to use the Hawaiian home lands special fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by Hawaiian home lands revenue bond funds."

SECTION 8. Part VII, Act 213, Session Laws of Hawaii 2007, is amended:

(1) By amending section 184 to read as follows:

"SECTION 184. Except as otherwise provided, the general fund appropriation for the office of the governor (GOV 100) shall be expended at the discretion of the governor; provided further that the office of the governor shall include in the 2007 variance report and executive budget supplement a listing of data collected for performance measures including the measures of effectiveness, program target groups, and program activities."

(2) By amending section 199 to read as follows:

"SECTION 199. Provided that of the federal fund appropriation for the department of human services, there are appropriated current year and carry-over federal Temporary Assistance for Needy Families (TANF) funds, in the sum of \$142,500,300 or so much thereof as may be necessary for fiscal year 2007-2008 and the sum of [~~\$138,000,000~~] \$115,913,598 or so much thereof as may be necessary for fiscal year 2008-2009; provided further that these sums shall be expended for the implementation of the TANF program, its associated programs, and transfers to other programs; and provided further that any provision to expend funds from the current year or carry-over federal TANF funds shall be construed to be a portion of, and not in addition to, the sums indicated in this section."

(3) By adding a new section to read as follows:

"SECTION 200.1. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$3,505,034 or so much thereof as may be necessary for fiscal year 2008-2009 that shall be expended to achieve any one or more of the TANF purposes through purchase of service contracts in the following areas:

- (1)<sup>10</sup> \$150,000 for positive youth development services and outreach to alienated low-income at-risk youth in the Kalihi, Waipahu, Ewa Beach, and Waianae Coast regions of Oahu by implementing a replicable in-community prevention and rehabilitation model that utilizes group therapy;
- (2)<sup>10</sup> \$454,316 for services provided in neighborhood places that promote safe and nurturing environments, culturally sensitive parenting and family development programs and support groups, and family crisis counseling to protect children who are being abused or neglected or are at risk of such abuse or neglect on Oahu in Waimanalo, Central Kalihi, and Waianae; on Hawaii in Puna and Kona; on Maui in Wailuku; and on Kauai;
- (3)<sup>10</sup> \$444,000 for programs of one-to-one mentoring after school and on weekends by matching caring volunteers to children and youth, largely from single parent households in Honolulu, who are considered at risk and need positive adult role models;
- (4)<sup>10</sup> \$357,104 for positive youth development services in the county of Hawaii to third and fourth graders, especially under-achievers, and their



families with structured extracurricular civic learning activities in an after-school setting;

- (5)<sup>10</sup> \$450,000 for positive youth development programs including life skills training, mediation skills, and tutoring assistance in the after-school hours from 1:40 to 6:00 pm for students in grades six through eight in Kapaa middle, Chiefess Kamakahahei middle, and Waimea Canyon schools on Kauai;
- (6)<sup>10</sup> \$150,000 for training stipends, equipment, food supplies, and tuition for TANF eligible adults enrolled in culinary training and food service preparation program training sites in Hilo and Captain Cook on the island of Hawaii;
- (7)<sup>10</sup> \$300,000 for a training program for thirty-eight TANF eligible adults to gain employment and economic self-sufficiency by participating in bio-tech tissue culturing projects for biodiesel, biomass, and other agricultural products in the Hilo and lower and upper Puna districts on the island of Hawaii;
- (8)<sup>10</sup> \$505,034 for collaborative transitional living programs offered through agencies accredited by the council on accreditation on services for families and children throughout the state to assist TANF eligible youth, heads of households with dependent children who are runaways, homeless and street youth, and youth at risk of homelessness in all counties to enable these youth to learn skills essential for successful independent living;
- (9)<sup>10</sup> \$288,468 to expand computer literacy, training, life skills, and tutoring programs after school hours for disadvantaged youth and in the evenings for TANF eligible adults serving native Hawaiian, Pacific Island, and other ethnic groups living in Palolo Valley housing projects;
- (10)<sup>10</sup> \$321,112 to assist at least forty native Hawaiian TANF eligible families on the Leeward coast to succeed at homeownership by providing classes in home repair, financial literacy, and essentials of homeownership and by providing access to reusable homebuilding materials; and
- (11)<sup>10</sup> \$85,000 to assist three hundred TANF eligible families on Kauai to rise above the poverty line toward self-sufficiency with outreach and other tax preparation assistance to claim the earned income tax credit;

provided further that the department of human services shall prepare a report that shall include but not be limited to:

- (1)<sup>10</sup> The names of the contracted providers selected to provide the above services;
- (2)<sup>10</sup> Amounts expended to each contracted provider;
- (3)<sup>10</sup> The number of individuals served under each contract; and
- (4)<sup>10</sup> Measures of the benefits achieved under each contract;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

- (4) By amending section 201 to read as follows:

“SECTION 201. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2007-2008 and the [same] sum of \$270,000 or so much thereof as may be necessary for fiscal year 2008-2009 for [three] four temporary positions to assist with the administration of the department’s TANF program.”

- (5) By amending section 203 to read as follows:

“SECTION 203. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$45,000,000 or so much thereof as may be necessary for fiscal year 2007-2008 and

the [same] sum of \$44,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 that shall be expended to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives, and for associated eligibility determination costs.”

(6) By amending section 204 to read as follows:

“SECTION 204. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$38,663,587 or so much thereof as may be necessary for fiscal year 2007-2008 and the [same] sum of \$23,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 that shall be expended to obtain work program contracts for TANF and TAONF recipients; and to provide support services for TANF and TAONF recipients[;and to prevent and reduce the incidence of out-of-wedlock pregnancies and to encourage the formation and maintenance of two-parent families].”

(7) By adding a new section to read as follows:

“SECTION 204.1. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$2,800,000 or so much thereof as may be necessary for fiscal year 2008-2009 that shall be expended for the uniting peer learning integrating new knowledge (UP-LINK) program during after-school hours; provided further that the funds shall not be expended for any other purpose; and provided further that the department shall submit a report to the legislature on the effectiveness of the program no later than twenty days prior to the convening of the 2009 regular session.”

(8) By adding a new section to read as follows:

“SECTION 204.2. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2008-2009 that shall be expended for after school hours programs for children and youth enrolled in school; provided further that the department shall work with the office of youth services in carrying out the purposes of this section; provided further that the department shall follow the intent of Act 281, Session Laws of Hawaii 2006; and provided further that the department shall submit a detailed expenditure report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(9) By adding a new section to read as follows:

“SECTION 204.3. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$3,800,000 or so much thereof as may be necessary for fiscal year 2008-2009 that shall be expended for enhanced healthy start programs; provided further that the funds shall not be expended for any other purpose; and provided further that the department shall submit a detailed expenditure report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(10) By adding a new section to read as follows:

“SECTION 204.4. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 that shall be expended to prevent and reduce the incidence of out-of-wedlock pregnancies and to encourage the formation and maintenance of two parent families.”

(11) By repealing section 205:

[SECTION 205. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$7,000,000 or so much thereof as may be necessary for fiscal year 2007-2008 and the same sum or so much thereof as may be necessary for fiscal year 2008-2009 that shall be expended for purchase of service contracts for child protective services.]

(12) By amending section 206 to read as follows:

“SECTION 206. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$19,900,000 or so much thereof as may be necessary for fiscal year 2007-2008 and the [same] sum of \$14,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 that shall be transferred to the child care development fund.”

(13) By adding a new section to read as follows:

“SECTION 211.1. Provided that the Hawaii public housing authority shall prepare a report containing a financial plan that shall include fiscal year 2003-2004 to fiscal year 2012-2013; provided further that fiscal year 2003-2004 to fiscal year 2007-2008 shall include actual revenues and expenditures; provided further that fiscal year 2008-2009 to fiscal year 2012-2013 shall include projected revenues and expenditures; provided further that all projected expenditures and revenues shall include the assumptions used to derive them; provided further that the plan shall include revenues and expenditures for the federal low rent program, the state family public housing program, and the state elders program; provided further that the financial plan shall include but not be limited to the following revenues:

- (1)<sup>10</sup> Rental income;
- (2)<sup>10</sup> Operating subsidy;
- (3)<sup>10</sup> State repair and maintenance fund;
- (4)<sup>10</sup> State security;
- (5)<sup>10</sup> Federal capital transfer; and
- (6)<sup>10</sup> Other income;

provided further that the financial plan shall include but not be limited to the following expenditures:

- (1)<sup>10</sup> Project;
- (2)<sup>10</sup> Personal services;
- (3)<sup>10</sup> Administrative expenses;
- (4)<sup>10</sup> Professional services;
- (5)<sup>10</sup> Security;
- (6)<sup>10</sup> Insurance;
- (7)<sup>10</sup> Repair and maintenance;
- (8)<sup>10</sup> Utilities;
- (9)<sup>10</sup> Payment in lieu of taxes;
- (10)<sup>10</sup> Other expense; and
- (11)<sup>10</sup> Other transfers;

provided further that the report shall identify any unrestricted fund balances available to the authority; provided further that the report shall include any fund balances in any fund accounts outside the state treasury; provided further that the report shall include a list of all expenditures made for any appropriation outside the executive supplemental budget for fiscal year 2007-2008; provided further that the report shall include the status of assistance provided by the United States Department of Housing and Urban Development or fiscal advisor to overhaul the fiscal operations of the authority; provided further that the report shall discuss all measures being taken by the authority to remedy any current or future budgetary shortfalls; provided further that the financial plan portion of this report shall be posted conspicuously on the website of the authority in downloadable and editable Microsoft Excel format; and provided further that the authority shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session.”

(14) By adding a new section to read as follows:

“SECTION 211.2. Provided that the department of public safety shall prepare a report on overtime costs that shall include the following:

- (1) Amount budgeted for overtime by program ID;
- (2) Amount expended on overtime by program ID;

- (3) Explanation of the department's plans to better reflect the true cost of overtime by submitting requests to the legislature to transfer funds currently being used for overtime from where the funds are budgeted to the overtime cost category; and
- (4) Strategies the department will use to reduce such expenditures in the future;

provided further that the report shall include actual expenditures on overtime from fiscal year 2003-2004 to fiscal year 2007-2008; provided further that the report shall include to-date and projected expenditures on overtime for fiscal year 2008-2009 to fiscal year 2012-2013; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2009 regular session."

- (15) By adding a new section to read as follows:

"SECTION 211.3. Provided that the department of labor and industrial relations shall prepare a report on the status of meeting staffing level benchmarks as determined by the United States Occupational Safety and Health Administration; provided further that the report shall provide the status of filling the federally mandated nine safety compliance officers, nine health compliance officers, and one compliance assistance specialist; provided further that the department shall provide a plan on how it intends to fill any vacant positions subject to federal staffing level benchmarks; and provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2009 regular session."

- (16) By adding a new section to read as follows:

"SECTION 211.4. Provided that for legal services (ATG 100), the attorney general and the office of Hawaiian affairs shall resume negotiations on the payment to be made by the State to the office of Hawaiian affairs to resolve the dispute concerning the amount and proceeds from the pro rata share portion of the public trust that the office should have received from November 7, 1978, to June 30, 2008, pursuant to article XII, sections 4 and 6 of the state constitution; and provided further that the attorney general and the office of Hawaiian affairs shall attempt to reach an agreement prior to the convening of the 2009 regular session and submit implementing legislation to the president of the senate and to the speaker of the house of representatives before the bill introduction deadline for that session."

SECTION 9. MISCELLANEOUS. If any portion of this Act or its application to any person, entity, or circumstance is held to be invalid for any reason, then the legislature declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 10. In the event manifest clerical, typographical or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

SECTION 11. Material to be repealed is bracketed and stricken. New material is underscored.<sup>11</sup>

SECTION 12. Nothing in this Act shall affect the validity or continuing effectiveness of any provisions of Act 213, Session Laws of Hawaii 2007, not repealed or modified by this Act.

SECTION 13. EFFECTIVE DATE. This Act shall take effect upon its approval.

(Approved June 10, 2008.)

#### Notes

1. Prior to amendment "A" appeared here.
2. So in original.
3. Prior to amendment "Standards" appeared here.

- 4. Prior to amendment "B" appeared here.
- 5. Prior to amendment "N" appeared here.
- 6. Items 13 to 24 were items 12 to 23 in Act 213, SLH 2007.
- 7. Prior to amendment "W" appeared here.
- 8. Prior to amendment "T" appeared here.
- 9. Prior to amendment "COH" appeared here.
- 10. Should be underscored.
- 11. Edited pursuant to HRS §23G-16.5.

**ACT 159**

H.B. NO. 118

A Bill for an Act Relating to State Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in article VII, section 13 of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance", the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the state is set forth in article VII, section 13 of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year" and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under article VII, section 13.
- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2007-2008 and estimated for each fiscal year from 2008-2009 to 2010-2011, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
2004-2005	\$4,471,460,582	
2005-2006	4,904,019,330	

2006-2007	5,122,620,268	
2007-2008	5,257,907,000	\$ 894,049,511
2008-2009	5,479,880,000	942,547,040
2009-2010	5,727,522,000	978,058,448
2010-2011	(not applicable)	1,015,360,722

For fiscal years 2007-2008, 2008-2009, 2009-2010, and 2010-2011, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 2004-2005, 2005-2006, and 2006-2007 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 2007, dated November 29, 2007. The net general fund revenues for fiscal years 2007-2008 to 2009-2010 are estimates, based on general fund revenue estimates made as of March 12, 2008, by the council on revenues, the body assigned by article VII, section 7 of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit.

- (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by article VII, section 13 of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 2008, is as follows for fiscal year 2008-2009 to fiscal year 2014-2015:

Fiscal Year	Principal and Interest
2008-2009	\$550,695,880
2009-2010	520,620,608
2010-2011	509,308,042
2011-2012	454,955,577
2012-2013	455,754,104
2013-2014	410,530,512
2014-2015	394,896,120

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2015-2016 to fiscal year 2026-2027 when the final installment of \$30,896,250 shall be due and payable.

- (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$191,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the State Constitution.
- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties.
  - (A) As calculated from the state comptroller's bond fund report as of February 29, 2008, adjusted for:

- (i) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in Act 213, Session Laws of Hawaii 2007 (the General Appropriations Act of 2007), to be expended in fiscal year 2008-2009, adjusted for additional appropriations provided in House Bill No. 2500, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the Supplemental Appropriations Act of 2008);
- (ii) Lapses as provided in House Bill No. 2500, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the Supplemental Appropriations Act of 2008); and
- (iii) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in Act 169, Session Laws of Hawaii 2007 (the Judiciary Appropriations Act of 2007) to be expended in fiscal year 2008-2009, adjusted for additional appropriations provided in House Bill No. 2700, H.D. 1, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Supplemental Appropriations Act of 2008);

the total amount of authorized but unissued general obligation bonds is \$1,730,773,507. The total amount of general obligation bonds authorized in this Act is \$805,079,000. The total amount of general obligation bonds previously authorized and unissued, as adjusted, and the general obligation bonds authorized in this Act is \$2,535,852,507.

- (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$191,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the State Constitution.
- (5) Proposed general obligation bond issuance. As reported therein for the fiscal years 2007-2008, 2008-2009, 2009-2010, and 2010-2011, the State proposed to issue \$400,000,000 in general obligation bonds during the remainder of second half of fiscal year 2007-2008, \$325,000,000 in general obligation bonds during the first half of fiscal year 2008-2009, \$340,000,000 in general obligation bonds during the second half of fiscal year 2008-2009, \$370,000,000 in general obligation bonds during the first half of fiscal year 2009-2010, \$370,000,000 in general obligation bonds during the second half of fiscal year 2009-2010, \$375,000,000 in general obligation bonds during the first half of fiscal year 2010-2011, and \$360,000,000 in general obligation bonds during the second half of fiscal year 2010-2011. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the fifth year, the bonds payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds that are proposed to be issued.
  - (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds that the State proposes to issue during the fiscal years 2007-2008 to 2009-2010 is \$1,805,000,000. An additional \$735,000,000 is proposed to be issued in fiscal year 2010-2011. The total amount of \$1,805,000,000 which is proposed to be issued through fiscal year 2009-2010 is sufficient to meet the re-

quirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$2,535,852,507 reported in paragraph (4), except for \$730,852,507. It is assumed that the appropriations to which an additional \$730,852,507 in bond issuance needs to be applied will have been encumbered as of June 30, 2010. The \$735,000,000 which is proposed to be issued in fiscal year 2010-2011 will be sufficient to meet the requirements of the June 30, 2010, encumbrances in the amount of \$730,852,507. The amount of assumed encumbrances as of June 30, 2010, is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds proposed to be issued by June 30, 2010, and the amount of June 30, 2010, encumbrances versus the amount of bonds proposed to be issued in fiscal year 2010-2011, the legislature finds that in the aggregate, the amount of bonds proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds.

(A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:

- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
- (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 1.75 per cent for the ten years from fiscal year 2007-2008 to fiscal year 2016-2017. For the purpose of this declaration, the assumption is made that one per cent of each bond issue shall be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative.

- (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor may be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7); provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under article VII, section 13 of the State Constitution for the fiscal



years 2007-2008, 2008-2009, 2009-2010, and 2010-2011 are as follows:

<u>Fiscal year</u>	<u>Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13 of the State Constitution</u>
2007-2008	\$4,442,724,012
2008-2009	4,762,504,540
2009-2010	5,161,270,000
2010-2011	5,533,200,000

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or shall have been established as heretofore provided, may be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to article VII, section 13 of the State Constitution shall become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate not to exceed 6.0 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds, and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

<u>Time of Issuance and Amount to be Counted Against Debt Limit</u>	<u>Debt Limit at Time of Issuance</u>	<u>Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties</u>
2 <sup>nd</sup> half FY 2007-2008 \$396,000,000	894,049,511	589,292,850 (2008-2009)
1 <sup>st</sup> half FY 2008-2009 \$321,750,000	942,547,040	598,945,350 (2008-2009)
2 <sup>nd</sup> half FY 2008-2009 \$336,600,000	942,547,040	592,133,436 (2009-2010)
1 <sup>st</sup> half FY 2009-2010 \$366,300,000	978,058,448	605,910,459 (2010-2011)

2 <sup>nd</sup> half FY 2009-2010	\$366,300,000	978,058,448	627,888,459 (2010-2011)
1 <sup>st</sup> half FY 2010-2011	\$371,250,000	1,015,360,722	639,025,959 (2010-2011)
2 <sup>nd</sup> half FY 2010-2011	\$356,400,000	1,015,360,722	648,658,455 (2012-2013)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 2500, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the Supplemental Appropriations Act of 2008) and House Bill No. 2700, H.D. 1, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Supplemental Appropriations Act of 2008), passed by this regular session of 2008, and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of general obligation bonds so issued shall not exceed \$805,079,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with Section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 10, 2008.)

**Notes**

1. Act 158.
2. Act 102.

A Bill for an Act Relating to Invasive Species.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 194-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the invasive species council for the special purpose of providing policy level direction, coordination, and planning among state departments, federal agencies, and international and local initiatives for the control and eradication of harmful invasive species infestations throughout the [State] state and for preventing the introduction of other invasive species that may be potentially harmful. The council shall:

- (1) Maintain a broad overview of the invasive species problem in the [State;] state;
- (2) Advise, consult, and coordinate invasive species-related efforts with and between the departments of agriculture, land and natural resources, health, and transportation, as well as state, federal, international, and privately organized programs and policies;
- (3) Identify and prioritize each lead agency’s organizational and resource shortfalls with respect to invasive species;
- (4) After consulting with appropriate state agencies, create and implement a plan that includes the prevention, early detection, rapid response, control, enforcement, and education of the public with respect to invasive species, as well as fashion a mission statement articulating the State’s position against invasive species; provided that the appropriate state agencies shall collaborate with the counties and communities to develop and implement a systematic approach to reduce and control coqui frog infestations on public lands that are near or adjacent to communities, and shall provide annual reports on the progress made in achieving this objective;
- (5) Coordinate and promote the State’s position with respect to federal issues, including:
  - (A) Quarantine preemption;
  - (B) International trade agreements that ignore the problem of invasive species in Hawaii;
  - (C) First class mail inspection prohibition;
  - (D) Whether quarantine of domestic pests arriving from the mainland should be provided by the federal government;
  - (E) Coordinating efforts with federal agencies to maximize resources and reduce or eliminate system gaps and leaks, including deputizing the United States Department of Agriculture’s plant protection and quarantine inspectors to enforce Hawaii’s laws;
  - (F) Promoting the amendment of federal laws as necessary, including the Lacey Act Amendments of 1981, Title 16 United States Code [sections] Sections 3371-3378; Public Law 97-79, and laws related to inspection of domestic airline passengers, baggage, and cargo; and
  - (G) Coordinating efforts and issues with the federal Invasive Species Council and its National Invasive Species Management Plan;
- (6) Identify and record all invasive species present in the [State;] state;
- (7) Designate the department of agriculture, health, or land and natural resources as the lead agency for each function of invasive species control,

- including prevention, rapid response, eradication, enforcement, and education;
- (8) Identify all state, federal, and other moneys expended for the purposes of the invasive species problem in the [State] state;
  - (9) Identify all federal and private funds available to the State to fight invasive species and advise and assist state departments to acquire these funds;
  - (10) Advise the governor and legislature on budgetary and other issues regarding invasive species;
  - (11) Provide annual reports on budgetary and other related issues to the legislature twenty days prior to each regular session;
  - (12) Include and coordinate with the counties in the fight against invasive species to increase resources and funding and to address county-sponsored activities that involve invasive species;
  - (13) Review state agency mandates and commercial interests that sometimes call for the maintenance of potentially destructive alien species as resources for sport hunting, aesthetic resources, or other values;
  - (14) Review the structure of fines and penalties to ensure maximum deterrence for invasive species-related crimes;
  - (15) Suggest appropriate legislation to improve the State's administration of invasive species programs and policies;
  - (16) Incorporate and expand upon the department of agriculture's weed risk assessment protocol to the extent appropriate for the council's invasive species control and eradication efforts; and
  - (17) Perform any other function necessary to effectuate the purposes of this [F]chapter[{}]."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 10, 2008.)

## ACT 161

H.B. NO. 2955

A Bill for an Act Relating to Archaeological Data.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§6E- Archaeological data survey database.** (a) There is established a Hawaii archaeological data survey database designated as a program of the State of Hawaii Museum of Natural and Cultural History. The database shall be online and accessible to the public through the Internet. The information within the database may include information relating to the collections of the Bernice Pauahi Bishop Museum, publicly available materials, and materials from private entities or organizations. The database may include archaeological information such as reports, photographs, drawings, maps, and archived documents. The database may also include compilations of collections information from public and private repositories including:

- (1) A description of the types and amounts of materials and associated documentation in each collection;
- (2) A listing of the owner or owners of all materials and associated documentation in each collection;
- (3) A general assessment of the condition of the components of each collection; and
- (4) Other relevant information pertaining to each collection.

The data survey database shall be developed and maintained by the State of Hawaii Museum of Natural and Cultural History, in consultation with the state historic preservation division and other appropriate state and federal agencies and private organizations.

(b) The archaeological data survey shall not include any information required to remain confidential under federal, state, or county laws, rules, or regulations.

(c) The State of Hawaii Museum of Natural and Cultural History, in consultation with the office of Hawaiian affairs and the state historic preservation division, may temporarily or permanently withhold from the database any information due to a valid threat of destruction or loss of the information, or if disclosure may frustrate the legitimate and necessary function of protecting a valuable archaeological site or artifact. The entities shall determine what information shall be withheld from the data survey; provided that prior consultation is sought with any affected state or federal governmental agencies, or private individuals or organizations.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 10, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 162**

S.B. NO. 2482

A Bill for an Act Relating to the Hawai‘i Institute of Marine Biology.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawai‘i institute of marine biology is a world-renowned research institute situated on Coconut Island in Kane‘ohe Bay. Coconut Island provides excellent opportunities for research as it covers approximately twenty-nine acres with six acres enclosed in lagoons that are used for keeping organisms in captivity for study. Coconut Island is surrounded by sixty-four acres of coral reef, which is designated by the State as a Hawai‘i Marine Laboratory Refuge, and only researchers who are associated with the Hawai‘i institute of marine biology are allowed to collect specimens from the refuge. The ongoing research projects cover many disciplines of tropical marine science and the institute’s faculty and students come from all over the world.

The purpose of this Act is to extend the lapse date of the funds provided for the planning, design, and construction of a modern laboratory and office complex on Coconut Island.

SECTION 2. Act 160, Session Laws of Hawaii 2006, is amended by amending section 8, paragraph (1) to read as follows:

“SECTION 8. Part VII, Act 178, Session Laws of Hawaii 2005, is amended:

(1) By amending section 119 to read as follows:

“SECTION 119. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized under this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all appropriations made to be expended in fiscal biennium 2005-2007 that are unencumbered as of June 30, 2008 shall lapse as of that date; provided further that this lapsing date shall not apply to appropriations for the project described in section 85 of this Act. (UOH 100), item 109, however, moneys unencumbered as of June 30, 2010 for item 109 shall lapse as of that date; provided further that this lapsing date shall not apply to: (a) appropriations for projects described in section 85 of this Act where the means of funding is designated to be the state educational facilities improvement special fund, and where such appropriations have been authorized for the construction or acquisition of public school facilities which, if unencumbered on June 30, 2010, shall lapse as of that date; and (b) non-general fund appropriations for projects described in section 85 of this Act where such appropriations have been deemed necessary to qualify for federal aid financing and reimbursement.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 29, 2008.

(Approved June 10, 2008.)

## ACT 163

S.B. NO. 2169

A Bill for an Act Relating to Liquor Licenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 281-31, Hawaii Revised Statutes, is amended to read as follows:

“**§281-31 Licenses, classes.** (a) Licenses may be granted by the liquor commission as provided in this section.

(b) Class 1. [~~Manufacturers~~<sup>2</sup>] Manufacturer license. A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption. Under this license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) Beer;
- (2) Wine;
- (3) Alcohol; and
- (4) Other specified liquor.

It shall be unlawful for any holder of a [~~manufacturer~~<sup>s</sup>] manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee. This subsection shall not prevent the holder of a beer class [~~manufacturer~~<sup>s</sup>] manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a beer and wine class wholesale dealer licensee under this chapter whose wholesaling is limited to beer, other than direct ownership of a beer and wine class wholesale [~~dealer~~<sup>s</sup>] dealer license, or direct ownership of a partnership share, one or more shares of stock, or

similar proprietary stake in the holder of a beer and wine class wholesale [~~dealer's~~ dealer] license.

- (c) Class 2. Restaurant license.
- (1) A license under this class shall authorize the licensee to sell [~~liquors~~ liquor] specified in this subsection for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishment shall be as follows:
  - (A) A standard bar; or
  - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.
- (2) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment[.].
- (3) For each category of class 2 licenses, there shall be the following kinds:
  - (A) General (includes all [~~liquors~~ liquor] except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.

Any licensee holding a different class of license on June 19, 1990, and who would otherwise come within this class of license shall not be required to apply for a new license.

(d) Class 3. Wholesale [~~dealers'~~ dealer] license. A license for the sale of [~~liquors~~ liquor] at wholesale shall authorize the licensee to import and sell only to licensees, or to others who are by law authorized to resell but are not by law required to hold a license, the [~~liquors~~ liquor] therein specified in quantities not less than five gallons at one time if sold from or in bulk containers or not less than one gallon if bottled goods; provided that samples of liquor may be sold back to the manufacturer. The license may authorize the licensee to sell draught beer in quantities not less than five gallons at one time to any person for private use and consumption if the licensee files an affidavit with the commission that there is not a class 4 retail [~~dealers~~ dealer] licensee available to sell the [~~wholesalers~~ wholesaler's] brand of draught beer. Under the license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all [~~liquors~~ liquor] except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.

If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer [~~has~~ holds] the [~~dealer's~~ dealer] license. Nothing in this subsection shall prevent a wholesaler from selling [~~liquors~~ liquor] to post exchanges, [~~ships~~ ships]' service stores, army or navy officers' clubs, or similar organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the [~~State,~~ state], or to aviation companies who operate an aerial transportation enterprise as a common carrier, under chapter 269, engaged in regular flight passenger services between any two or more airports in the [~~State~~ state] for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the [~~State,~~ state].

(e) Class 4. Retail [~~dealers~~<sup>2</sup>] dealer license. A license to sell [~~liquors~~] liquor at retail or to class 10 licenses shall authorize the licensee to sell the [~~liquors~~] liquor therein specified in their original packages. Under the license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all [~~liquors~~] liquor except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.

(f) Class 5. [~~Dispensers~~<sup>2</sup>] Dispenser license.

(1) A license under this class shall authorize the licensee to sell [~~liquors~~] liquor specified in this subsection for consumption on the premises. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:

- (A) A standard bar;
- (B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;
- (C) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by commission rules; or
- (D) Premises in which employees or entertainers are compensated to sit with patrons, regardless of whether the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons pursuant to commission rules.

(2) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(3) For each category of class 5 licenses, there shall be the following kinds:

- (A) General (includes all [~~liquors~~] liquor except alcohol);
- (B) Beer and wine; and
- (C) Beer.

(g) Class 6. Club license. A club license shall be general only (but excluding alcohol) and shall authorize the licensee to sell [~~liquors~~] liquor to members of the club and to guests of the club enjoying the privileges of membership, for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor, if owned by the member, for the member's own personal use and not to be sold and that may be consumed only on the premises.

(h) Class 7. Vessel license. A general license may be granted to the owner of any vessel performing a regular water transportation passenger service between any two or more ports in the [~~State~~] state for the sale of liquor (other than alcohol) on board the vessel while in the waters of the [~~State~~;] state; provided the sales are made only while the vessel is en route and only for consumption by passengers on board. If the vessel has a home port in the [~~State~~;] state, the license shall be issuable in the county in which the home port is situated; provided that if the licensee's home port is not situated in this [~~State~~;] state, the license shall be issuable in the city and county of Honolulu. If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the [~~State~~;] state, it shall constitute a violation of this chapter.

(i) Class 8. Transient vessel license. A general license may be granted to the owner of any vessel that does not fall within class 7 for the sale of liquor (other



than alcohol) on board the vessel while in any port of the [State,] state. Sales shall be made only for consumption by passengers and their guests on board the vessel. The license shall be issuable in each county where the sales are to be made; provided that the application for the license may be made by any agent representing the owner.

(j) Class 9. Tour or cruise vessel license. A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor (other than alcohol) on board the vessel while in the waters of the [State,] state; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the [State,] state, unless otherwise approved by the county where the license has been issued. If the vessel has a home port in the [State,] state, the license shall be issuable in the county wherein the home port is situated; provided that if the licensee's home port is not situated in this [State,] state, the license shall be issuable in the city and county of Honolulu. If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the [State,] state, it shall constitute a violation of this chapter.

(k) Class 10. Special license. A special license may be granted for the sale of liquor for a period not to exceed three days on any occasion and under any conditions as may be approved by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all [~~liquors~~] liquor except alcohol);
- (2) Beer and wine; and
- (3) Beer.

Under this license, the [~~liquors~~] liquor therein specified shall be consumed on the premises.

(l) Class 11. Cabaret license. A cabaret license shall be general only (but excluding alcohol) and shall authorize the sale of [~~liquors~~] liquor for consumption on the premises. This license shall be issued only for premises where food is served, facilities for dancing by the patrons are provided, including a dance floor, and live or amplified recorded music or professional entertainment, except professional entertainment by a person who performs or entertains unclothed, is provided for the patrons; provided that professional entertainment by persons who perform or entertain unclothed shall be authorized by:

- (1) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or
- (2) A cabaret license that, pursuant to rules adopted by the liquor commission, permits professional entertainment by persons who perform or entertain unclothed.

A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000. A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except when the transferee obtains approval from the liquor commission, and pursuant to rules adopted by the commission. Notwithstanding any rule of the liquor commission to the contrary, cabarets in resort areas may be opened for the transaction of business until 4 a.m. throughout the entire week.

(m) Class 12. Hotel license. A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all [~~liquors,~~] liquor, except alcohol, for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering, if the catering activity is directly related to the licensee's operation as a hotel.

Procedures such as room service, self-service (no-host), minibars or similar service in guest rooms, and service at private parties in areas that are the property of and contiguous to the hotel, are permitted with commission approval.

Any licensee who would otherwise fall within the hotel license class but holds a different class of license may be required to apply for a hotel license.

If the licensee applies for a change of classification prior to July 30, 1992, the licensee shall not be subject to the requirements of sections 281-52, 281-54, and 281-57 through 281-59.

Any licensee holding a class 12 license on [F]May 1, 2007,[H] and who would otherwise come within this class of license may apply to the liquor commission in which the licensee is seeking a change in liquor license for a change to a class 15 license; provided that the licensee shall not be subject to the requirements of section 281-54 and sections 281-57 to 281-60.

If a licensee holding a class 12 license on [F]May 1, 2007,[H] applies for a change to a class 15 license, the respective liquor commission shall hold a public hearing upon notice, and upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application, accept all written or oral testimony for or against the application, and render its decision granting or refusing the application. If the application is denied, the class 12 license shall continue in effect in accordance with law.

(n) Class 13. Caterer license. A general license may be granted to any licensee who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions.

No catering service for the sale of liquor shall be performed off the licensee's premises, unless prior written notice of the service has been delivered to the office of the liquor commission of the county concerned. The notice shall state the date, time, and location of the proposed event and shall include a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.

(o) Class 14. Brewpub license. A brewpub licensee:

- (1) Shall manufacture not more than ten thousand barrels of malt beverages on the licensee's premises during the license year;
- (2) May sell malt beverages manufactured on the licensee's premises for consumption on the premises;
- (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3[5] wholesale dealer licensees pursuant to conditions imposed by county planning and public works departments;
- (4) May sell intoxicating liquor, purchased from a class 1[5] manufacturer licensee, or a class 3[5] wholesale ~~dealer's~~ dealer licensee, to consumers for consumption on the licensee's premises; provided that the premises is owned and operated by the licensee. The categories of establishments shall be as follows:
  - (A) A standard bar; or
  - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
- (5) May sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass container, not to exceed one half-gallon, which may be securely sealed;
- (6) May sell malt beverages manufactured on the licensee's premises to consumers, in recyclable containers that may be provided by the licensee or by the consumer, not to exceed one gallon per container,

which are securely sealed on the licensee's premises, for off-premises consumption;

- (7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages;
- (8) May sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 [~~dispensers~~<sup>2</sup>] dispenser licensees, class 6 club licensees, class 7[~~,8, and 9~~] vessel licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, and class 15 condominium hotel [~~licensee,~~] licensees, pursuant to conditions imposed by county planning and public works departments and regulations governing class 3 wholesale [~~dealers~~] dealer licensees; and
- (9) May conduct the activities described in paragraphs (1) through (8) at one location other than the licensee's premises; provided that the manufacturing takes place in Hawaii; and provided further the other location is properly licensed by the same ownership.

(p) Class 15. Condominium hotel license. A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all [~~liquors,~~] liquor, except alcohol, for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering; provided further that the catering activity is directly related to the licensee's operation as a condominium hotel.

Procedures such as room service, self-service (no-host), minibars or similar service in apartments, and service at private parties in areas that are the property of and contiguous to the condominium hotel, are permitted with commission approval.

A condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail dealer's license.

(q) Class 16. Winery license. A winery licensee:

- (1) Shall manufacture not more than ten thousand barrels of wine on the licensee's premises during the license year;
- (2) May sell wine manufactured on the licensee's premises for consumption on the premises;
- (3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by county planning and public works departments;
- (4) May sell wine manufactured on the licensee's premises to consumers in winery-sealed kegs and magnums for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container, not to exceed one half-gallon, which may be securely sealed;
- (5) May sell wine manufactured on the licensee's premises to consumers, in recyclable containers that may be provided by the licensee or by the consumer, not to exceed one gallon per container, which are securely sealed on the licensee's premises, for off-premises consumption;
- (6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine;
- (7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 7 vessel licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13

caterer licensees, class 14 brewpub licensees, and class 15 condominium hotel licensees, pursuant to conditions imposed by county planning and public works departments and rules governing class 3 wholesale dealer licensees; and

- (8) May conduct the activities described in paragraphs (1) through (7) at locations other than the licensee's premises; provided that the manufacturing takes place in Hawaii; and provided further that the other locations are properly licensed by the same ownership.

~~(e)~~ (r) It shall be unlawful for any retail licensee, except a class 10 licensee, to purchase, acquire, or sell liquor from any person other than a wholesaler licensed pursuant to this chapter, except as otherwise provided in this section.

~~(f)~~ (s) Any provision to the contrary notwithstanding, at the discretion of the county liquor commission, permission may be granted to a bona fide hotel, restaurant, or club licensed under class 2, class 6, class 11, class 12, class 14, ~~(f)~~ class 15, or class 16 to allow a patron to remove from the licensed premises any portion of wine that was purchased for consumption with a meal; provided that it is recorked or resealed in its original container. This subsection applies only to a valid holder of a class 2, class 6, class 11, class 12, class 14, ~~(f)~~ class 15, or class 16 license engaged in meal service.

~~(g)~~ (t) Sections 281-57 to 281-60 shall not apply to classes 7 through 10 and 13.”

SECTION 2. Section 281-33.6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Any person holding:

- (1) A general excise tax license from the department of taxation; and

- (2) Either:

(A) A class 1 or class 16 license to manufacture wine under section 281-31; or

(B) A license to manufacture wine issued by another state,

may pay any applicable fees and obtain a direct wine shipper permit from the liquor commission of the county to which the wine will be shipped authorizing the holder to directly ship wine to persons in the county pursuant to this section.”

2. By amending subsection (c) to read:

“(c) The holder of a license to manufacture wine issued by another state may annually renew a direct wine shipper permit by providing the liquor commission that issued the permit with a copy of the license and paying all required fees. The holder of a class 1 or class 16 license to manufacture wine under section 281-31 may renew a direct wine shipper permit concurrently with the class 1 license by complying with all applicable laws and paying all required fees.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 10, 2008.)

A Bill for an Act Relating to Teacher Licensure.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to subpart D of part III to be appropriately designated and to read as follows:

**“§302A- Conviction of a teacher for sexual offense; suspension of license; procedure for license revocation.** (a) The board may suspend an individual’s license to teach without a hearing upon receipt of a certified copy of a judgment of conviction indicating that a teacher has been convicted of a sexual offense as defined in section 846E-1, or under a similar law of another state of the United States, and verification of the identity of the teacher. Immediately upon suspension, the board shall initiate proceedings in accordance with chapter 91 to permanently revoke an individual’s license to teach.

(b) The clerk of the court in this state in which the conviction of a teacher for any sexual offense against a minor, as described in subsection (a), was entered shall transmit to the board, within ten days after the date of the conviction, a certified copy of the judgment of conviction.

(c) The department of education, and any independent school agency or charter school agency in the state shall notify the board of the name of any teacher convicted of a sexual offense as specified in subsection (a).

(d) When any individual is being tried by a court of an offense specified in subsection (a) the board shall notify the clerk of the court that the individual is a teacher.

(e) The board shall mail notice of its intent to initiate proceedings to permanently revoke the license by certified mail, return receipt requested, directed to the teacher at the teacher’s last known address, within ten days of the suspension. In addition to any information required under section 91-9, the notice shall inform the teacher that the board shall revoke the teacher’s license unless the teacher notifies the board in writing within ten days after receipt of the notice that the teacher intends to contest the suspension and pending revocation in accordance with chapter 91. Upon receipt of written notice by the board, the board may continue the suspension of the license pending the outcome of the administrative hearing process established by chapter 91.

(f) A person whose license to teach has been suspended pursuant to subsection (a) may petition the board to reconsider the suspension and pending revocation pursuant to chapter 91. Grounds for reconsideration shall include reversal of the conviction by a final decision of the appellate court or supreme court as well as the criteria specified in subsection (h). The petitioner shall attach to the petition a certified copy of the appellate court’s final decision and any other information supporting the petition. Upon receipt of the petition, the board shall conduct a hearing on the matter pursuant to chapter 91, unless waived by the petitioner, and may reverse or affirm its previous decision to suspend and revoke, notwithstanding the reversal of conviction or any other criteria specified in subsection (h).

(g) A final decision of the board is subject to judicial appeal pursuant to section 91-14.

(h) In addition to reversal of conviction as specified in subsection (f), the board may also consider the circumstances of the conviction, including the nature and type of conduct that led to the conviction, the severity of the conduct, the length of time that has passed since the commission of the conduct, and whether the conduct

indicates that the petitioner poses an actual risk to the health, safety, or well-being of children within the school system. For convictions under a similar law of another state of the United States, the board shall determine that the conduct that is the basis for the conviction would be sufficient to sustain a conviction for a sexual offense as defined in section 846E-1 if the conduct had occurred within the State of Hawaii.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon approval, and shall be repealed on July 1, 2010, or upon adoption of rules regarding the matter by the Hawaii teacher standards board, whichever is earlier.

(Approved June 11, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 165**

H.B. NO. 2366

A Bill for an Act Relating to the Organ Donor Registry.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. (a) The director of health may contract for the establishment of a statewide organ donor registry; provided that in no instance shall the contract authorize the expenditure of state funds. The contract shall provide for a centralized database and automated system to make organ donor information available to individuals who register for online system access. Information in the registry shall be an open record where authorized family members and physicians may learn of a person’s wishes regarding organ donation seven days a week, twenty-four hours per day. The registry shall be established to allow individuals to register as organ donors through the online system as an option in the future. The registry shall be used to compile the organ donation information received by the department of transportation, county motor vehicle agencies, attorneys, organ donation awareness programs, and others.

(b) The director of health shall work with the department of transportation, county motor vehicle agencies, the Organ Donor Center of Hawaii, and any other parties interested in developing specifications for the registry. In developing these specifications, consideration shall be given to implementing an automated toll-free hotline.

SECTION 2. The director of health shall apply for a federal grant from the United States Department of Health and Human Services’ Health Resources and Services Administration intended to fund improvements to Hawaii’s organ donor registry system and may contract with a Hawaii organ procurement organization for the establishment of a statewide organ donor registry.

SECTION 3. This Act shall take effect on July 1, 2008.

(Approved June 11, 2008.)

A Bill for an Act Relating to Rental Assistance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 356D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§356D- Rent supplement; qualification.** Except as provided by federal law, nothing in this chapter shall prevent a person who otherwise qualifies for rent supplement under this chapter from taking up to ninety days (from the day the person’s application for rent supplement is approved) to secure a qualified rental dwelling; provided that rent supplement payments shall not commence until a qualified rental dwelling is secured.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 11, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Honey.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to ensure that honey products are recognized by the State as agricultural commodities.

SECTION 2. Chapter 147, Hawaii Revised Statutes, is amended by amending the title of part I to read as follows:

**“PART I. FRESH FRUITS [AND], VEGETABLES,  
NUTS, HONEY, AND COFFEE”**

SECTION 3. Section 147-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

**““Raw unprocessed honey” means honey that has not been heated above one hundred twenty degrees Fahrenheit, or filtered through a fine screen of less than one-sixty-fourth inch mesh, or treated with diatomaceous earth, or in any other way that results in the loss of any natural constituent of honey, such as plant pollen and enzymes.”**

2. By amending the definition of “agricultural commodity” to read:

**““Agricultural commodity” means fresh fruits and fresh vegetables of every kind and character, whether or not frozen or packed in ice, whether produced in the [State] state or imported, nuts, and coffee, whether cherry[.] or parchment, or green**

beans, which have been produced in the [State;] state, and raw unprocessed honey, whether produced in the state or imported.”

SECTION 4. Chapter 147, Hawaii Revised Statutes, is amended by amending the title of part II to read as follows:

**“PART II. EXPORTS: FRUITS, VEGETABLES,  
NUTS, [AND] COFFEE, AND HONEY”**

SECTION 5. Section 147-21, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Raw unprocessed honey” means honey that has not been heated above one hundred twenty degrees Fahrenheit, or filtered through a fine screen of less than one-sixty-fourth inch mesh, or treated with diatomaceous earth, or in any other way that results in the loss of any natural constituent of honey, such as plant pollen and enzymes.”

2. By amending the definition of “agricultural commodity” to read:

““Agricultural commodity” means fruits, vegetable, nuts, [and] coffee[;], and raw unprocessed honey.”

SECTION 6. Section 147-51, Hawaii Revised Statutes, is amended:

1. By adding a new definition to be appropriately inserted and to read as follows:

““Processed honey” means honey that has been heated above one hundred twenty degrees Fahrenheit, or filtered through a fine screen of less than one-sixty-fourth inch mesh, or treated with diatomaceous earth, or in any other way that results in the loss of any natural constituent of honey, such as plant pollen and enzymes.”

2. By amending the definition of “food product” or “product” to read:

““Food product” or “product” means any and all fruits, vegetables, nuts, and coffee, or part or parts thereof, produced and processed within the [State;] state, any and all honey produced and processed within the state or imported, and also any and all fish and fishery products processed within the [State;] state.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 12, 2008.)

**ACT 168**

H.B. NO. 2253

A Bill for an Act Relating to Amending or Repealing Various Provisions of Chapter 281, Hawaii Revised Statutes, Intoxicating Liquor, for the Purpose of Clarifying Language, Correcting Errors, and Deleting Unnecessary and Obsolete Provisions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 281-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Partner” means a partner in a general partnership, limited partnership, or limited liability partnership.”



SECTION 2. Section 281-4, Hawaii Revised Statutes, is amended to read as follows:

**“§281-4 Liquor consumption on unlicensed premises prohibited, when.** (a) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are ~~[sold or]~~ provided ~~[for compensation],~~ or brought in by patrons or guests, whether for compensation or not, or to which members of the public, or members of an organization, resort for food, refreshment, or entertainment, and who is not a licensee of the commission under this chapter, to promote, encourage, aid, or permit the consumption of liquor on the premises, except during the hours between which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located.

(b) It shall be unlawful for any person who is present at any restaurant or other premises where food, beverages, or entertainment are sold ~~[or]~~, provided ~~[for compensation],~~ or brought in by patrons or guests, or to which members of the public, or members of an organization, resort for food, refreshment, or entertainment, and which premises are not licensed by the commission under this chapter, to consume any liquor on the premises, except during the hours between which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located.

(c) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are ~~[sold or]~~ provided ~~[for compensation],~~ or brought in by patrons or guests, whether compensated or not, to sell or provide ~~[any food]~~ or ~~[beverages]~~ allow the consumption of liquor to or for any of the following persons knowing that such person has, or is about to obtain, liquor for consumption by the person on the premises, to wit:

- (1) Any minor~~[-]~~;
- (2) Any person at the time under the influence of liquor~~[-]~~;
- (3) Any disorderly person~~[-]~~;
- (4) Any person known to be addicted to the excessive use of liquor~~[-]~~; or
- (5) Any person, for consumption in any vehicle on the premises;

provided that the ~~[sale of or the]~~ providing of ~~[food or beverages]~~ liquor to or for a minor who has or is about to obtain liquor for consumption by the minor on the premises or allowing the consumption of liquor by a minor shall not be deemed to be a violation of this subsection if, at the time, the person ~~[so selling or]~~ providing ~~[food]~~ or ~~[beverages]~~ allowing the consumption of liquor was misled by the appearance of the minor and the attending circumstances into honestly believing that such minor was of legal age and the person acted in good faith, and it shall be incumbent upon the person to prove that the person so acted in good faith.

(d) Within the meaning of this section, the word “premises” includes any vessel as well as any place, with or without a structure thereon, and the hours between which licensed premises of dispensers are permitted to be open for the transaction of business shall be deemed to be those during which such dispensers are permitted to keep open their premises for the sale, service, and consumption of liquor, or any of them.”

SECTION 3. Section 281-17.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any such liquor license fees or any moneys collected or received by any liquor commission under this chapter may only be used for costs and expenses directly relating to operational and administrative costs actually incurred by the liquor commission collecting or receiving such liquor license fees or moneys. Such fees or

moneys shall not be used for any costs or expenses other than those directly relating to its operation and administration[-], except as otherwise provided by law.”

SECTION 4. Section 281-21, Hawaii Revised Statutes, is amended to read as follows:

**“§281-21 Service of subpoenas by investigators, police officers, or other law enforcement officers; witnesses’ fees.** Any investigator, police officer, or other law enforcement officer may serve any subpoena issued by the liquor commission [ø], liquor control adjudication board[-], or administrator.

Every witness attending or testifying at any hearing of the commission or board in response to a subpoena issued by it or the administrator shall be paid as provided for in section 621-7. If a witness is subpoenaed by direction of the commission [ø], board, or administrator, the witness’ fees shall be paid out of any funds which may be set aside for the expenses of the commission or board and, if the witness is subpoenaed on behalf of any interested party, the witness’ fees shall be paid by that party.”

SECTION 5. Section 281-31, Hawaii Revised Statutes, is amended to read as follows:

**“§281-31 Licenses, classes.** (a) Licenses may be granted by the liquor commission as provided in this section.

(b) Class 1. Manufacturers’ license. A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the [State] state in any quantity to any person for private use and consumption. Under this license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) Beer;
- (2) Wine;
- (3) Alcohol; and
- (4) Other specified liquor.

It shall be unlawful for any holder of a manufacturer’s license to have any interest whatsoever in the license or licensed premises of any other licensee. This subsection shall not prevent the holder of a [beer class] manufacturer’s license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a [beer and wine class] wholesale dealer licensee under this chapter [~~whose wholesaling is limited to beer, other than direct ownership of a beer and wine class wholesale dealer’s license, or direct ownership of a partnership share, one or more shares of stock, or similar proprietary stake in the holder of a beer and wine class wholesale dealer’s license~~].

(c) Class 2. Restaurant license.

- (1) A license under this class shall authorize the licensee to sell liquors specified in this subsection for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering[;] of food and liquor; provided further that the catering activity shall be directly related to the licensee’s operation as a restaurant. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishment shall be as follows:

- (A) A standard bar; or

- (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.
- (2) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment[.].
- (3) ~~[For each category of class 2 licenses,]~~ Of this class, there shall be the following kinds:
  - (A) General (includes all liquors except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.

~~[Any] Notwithstanding section 281-57, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding a [different class of] class 5 dispenser license [on June 19, 1990, and who would otherwise come within this class of license shall not be required to apply for a new license.] who meets the requirements of a class 2 license.~~

(d) Class 3. Wholesale dealers' license. A license for the sale of liquors at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell but are not by law required to hold a license, the liquors therein specified [~~in quantities not less than five gallons at one time if sold from or in bulk containers or not less than one gallon if bottled goods~~]; provided that samples of liquor may be sold back to the manufacturer. ~~[The license may authorize the licensee to sell draught beer in quantities not less than five gallons at one time to any person for private use and consumption if the licensee files an affidavit with the commission that there is not a class 4 retail dealers licensee available to sell the wholesalers brand of draught beer.]~~ Under the license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.

If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer has the dealer's license. Nothing in this subsection shall prevent a wholesaler from selling liquors to post exchanges, ~~ships~~ ships service stores, army or navy officers' clubs, or similar organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the ~~[State,]~~ state, or to aviation companies who operate an aerial transportation enterprise as a common carrier, under chapter 269, engaged in regular flight passenger services between any two or more airports in the ~~[State]~~ state for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

(e) Class 4. Retail dealers' license. A license to sell liquors at retail or to class 10 licenses shall authorize the licensee to sell the liquors therein specified in their original packages. Under the license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.

(f) Class 5. Dispensers' license.

- (1) A license under this class shall authorize the licensee to sell liquors specified in this subsection for consumption on the premises. A licensee

under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:

- (A) A standard bar;
  - (B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;
  - (C) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by commission rules; or
  - (D) Premises in which employees or entertainers are compensated to sit with patrons, regardless of whether the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons pursuant to commission rules.
- (2) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.
- (3) ~~[For each category of class 5 licenses,]~~ Of this class, there shall be the following kinds:
- (A) General (includes all liquors except alcohol);
  - (B) Beer and wine; and
  - (C) Beer.

(g) Class 6. Club license. A club license shall be general only (but excluding alcohol) and shall authorize the licensee to sell liquors to members of the club and to guests of the club enjoying the privileges of membership, for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor, if owned by the member, for the member's own personal use and not to be sold and that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public only pursuant to commission rules.

The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

~~(h) Class 7. Vessel license. A general license may be granted to the owner of any vessel performing a regular water transportation passenger service between any two or more ports in the State for the sale of liquor (other than alcohol) on board the vessel while in the waters of the State; provided the sales are made only while the vessel is en route and only for consumption by passengers on board. If the vessel has a home port in the State, the license shall be issuable in the county in which the home port is situated; provided that if the licensee's home port is not situated in this State, the license shall be issuable in the city and county of Honolulu. If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the State, it shall constitute a violation of this chapter.~~

(i) ~~(h)~~ Class 8. Transient vessel license. A general license may be granted to the owner of any vessel ~~[that does not fall within class 7]~~ for the sale of liquor (other than alcohol) on board the vessel while ~~[in]~~ en route within the jurisdictional limits of the state and within any port of the [State.] state. Sales shall be made only for consumption by passengers and their guests on board the vessel. The license shall be issuable in each county where the sales are to be made; provided that the application for the license may be made by any agent representing the owner.

~~(j)~~ (i) Class 9. Tour or cruise vessel license. A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor (other than alcohol) on board the vessel while in the waters of the [State;] state; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the [State;] state, unless otherwise approved by the county where the license has been issued. ~~[If the vessel has a home port in the State, the]~~ The license shall be issuable in the county wherein the home port is situated; ~~provided that if the licensee's home port is not situated in this State, the license shall be issuable in the city and county of Honolulu.~~ If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the [State;] state, it shall constitute a violation of this chapter.

The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

~~(k)~~ (j) Class 10. Special license. A special license may be granted for the sale of liquor for a period not to exceed three days ~~[on any occasion and under any conditions as may be approved by the commission.]~~ and pursuant to commission rule may be approved by the administrator for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquors in their original packages for off-premises consumption. Of this class, there shall be the following kinds:

- (1) General (includes all liquors except alcohol);
- (2) Beer and wine; and
- (3) Beer.

Under this license, the liquors therein specified shall be consumed on the premises.

~~(l)~~ (k) Class 11. Cabaret license. A cabaret license shall be general only (but excluding alcohol) and shall authorize the sale of liquors for consumption on the premises. This license shall be issued only for premises where food is served, facilities for dancing by the patrons are provided, including a dance floor, and live or amplified recorded music or professional entertainment, except professional entertainment by a person who performs or entertains unclothed, is provided for the patrons; provided that professional entertainment by persons who perform or entertain unclothed shall be authorized by:

- (1) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or
- (2) A cabaret license that, pursuant to rules adopted by the liquor commission, permits professional entertainment by persons who perform or entertain unclothed.

A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000. A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except when the transferee obtains approval from the liquor commission, and pursuant to rules adopted by the commission. Notwithstanding any rule of the liquor commission to the contrary, cabarets in resort areas may be opened for the transaction of business until 4 a.m. throughout the entire week.

~~(m)~~ (l) Class 12. Hotel license. A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquors, except alcohol, for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering[;] of

food and liquor, if the catering activity is directly related to the licensee's ~~operation as a hotel;~~ food service.

Procedures such as room service, self-service (no-host), minibars or similar service in guest rooms, and service at ~~private~~ parties in areas that are the property of and contiguous to the hotel, are permitted with commission approval.

Any licensee who would otherwise fall within the hotel license class but holds a different class of license may be required to apply for a hotel license.

If the licensee applies for a change of classification prior to July 30, 1992, the licensee shall not be subject to the requirements of sections 281-52, 281-54, and 281-57 through 281-59.

Any licensee holding a class 12 license on ~~[F]May 1, 2007,[F]~~ and who would otherwise come within this class of license may apply to the liquor commission in which the licensee is seeking a change in liquor license for a change to a class 15 license; provided that the licensee shall not be subject to the requirements of section 281-54 and sections 281-57 to 281-60.

If a licensee holding a class 12 license on ~~[F]May 1, 2007,[F]~~ applies for a change to a class 15 license, the respective liquor commission shall hold a public hearing upon notice, and upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application, accept all written or oral testimony for or against the application, and render its decision granting or refusing the application. If the application is denied, the class 12 license shall continue in effect in accordance with law.

~~[(n)]~~ (m) Class 13. Caterer license. A general license may be granted to any ~~[licensee]~~ applicant who serves food as part of their operation for the sale of liquor (other than alcohol) while performing food catering functions~~[-] off the premises~~.

No catering service for the sale of liquor shall be performed off the licensee's premises, unless prior written notice of the service has been delivered to the office of the liquor commission of the county concerned. The notice shall state the date, time, and location of the proposed event and shall include a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.

~~[(o)]~~ (n) Class 14. Brewpub license. A brewpub licensee:

- (1) Shall manufacture not more than ten thousand barrels of malt beverages on the licensee's premises during the license year;
- (2) May sell malt beverages manufactured on the licensee's premises for consumption on the premises;
- (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3~~[-]~~ wholesale dealer licensees pursuant to conditions imposed by county planning and public works departments;
- (4) May sell intoxicating liquor, purchased from a class 1~~[-]~~ manufacturer licensee, or a class 3~~[-]~~ wholesale dealer's licensee, to consumers for consumption on the licensee's premises~~[-] provided that the premises is owned and operated by the licensee~~. The categories of establishments shall be as follows:
  - (A) A standard bar; or
  - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
- (5) May sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass container, not to exceed one half-gallon, which ~~may~~ shall be securely sealed;

- (6) May sell malt beverages manufactured on the licensee’s premises to consumers, in recyclable containers that may be provided by the licensee or by the consumer, not to exceed one gallon per container, which are securely sealed on the licensee’s premises, for off-premises consumption;
- (7) Shall comply with all regulations pertaining to class 4 retail licensees when engaging in the retail sale of malt beverages; and
- (8) May sell malt beverages manufactured on the licensee’s premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispensers’ licensees, class 6 club licensees, class ~~[7, 8, and 9 vessel licensees.]~~ 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, and class 15 condominium hotel license, pursuant to conditions imposed by county ~~[planning and public works departments and]~~ regulations governing class 1 manufacturer’s licensees and class 3 wholesale dealers licensees]; and
- (9) ~~May conduct the activities described in paragraphs (1) through (8) at one location other than the licensee’s premises; provided that the manufacturing takes place in Hawaii; and provided further the other location is properly licensed by the same ownership].~~

~~[(p)]~~ (o) Class 15. Condominium hotel license. A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquors, except alcohol, for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering; provided further that the catering activity is directly related to the licensee’s operation as a condominium hotel.

Procedures such as room service, self-service (no-host), minibars or similar service in apartments, and service at private parties in areas that are the property of and contiguous to the condominium hotel, are permitted with commission approval.

A condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail dealer’s license.

Any licensee who would otherwise fall within the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.

~~[(q)]~~ (p) It shall be unlawful for any retail licensee, except a class 10 licensee, to purchase, acquire, or sell liquor from any person other than a wholesaler licensed pursuant to this chapter, except as otherwise provided in this section.

~~[(r)]~~ (q) Any provision to the contrary notwithstanding, at the discretion of the county liquor commission, permission may be granted to a bona fide hotel, restaurant, or club licensed under class 2, class 6, class 11, class 12, class 14, or class 15 to allow a patron to remove from the licensed premises any portion of wine that was purchased for consumption with a meal; provided that it is recorked or resealed in its original container. This subsection applies only to a valid holder of a class 2, class 6, class 11, class 12, class 14, or class 15 license engaged in meal service.

~~[(s)]~~ (r) Sections 281-57 to 281-60 shall not apply to classes ~~[7]~~ 8 through 10 and 13.”

SECTION 6. Section 281-32, Hawaii Revised Statutes, is amended to read as follows:

**“§281-32 Licenses, temporary.** A temporary license of any class and kind specified in section 281-31 may be granted under the following conditions[-]:

- (1) The premises shall have been operated under a license of the same class [~~and~~], kind, and category issued by the liquor commission at least one year immediately prior to the date of filing of the application for a temporary license[-], except as otherwise approved by the commission;
- (2) The license of the same class [~~and~~], kind, and category then in effect for the premises shall be surrendered in such manner and at such time as the commission shall direct[-];
- (3) The applicant for a temporary license shall have filed with the commission an application for a license of the same class [~~and~~], kind, and category currently or previously [~~then~~] in effect for the premises[-];
- (4) The application for a temporary license shall be accompanied by a license fee in such amount as may be prescribed by the commission. If the application is denied or withdrawn, the fee which accompanied the application shall [~~be refunded in full-~~] become a realization of the county;
- (5) A temporary license shall be for a period of not in excess of one hundred and twenty days. The license may be renewed at the discretion of the commission for not more than one additional [~~sixty-day~~] one hundred twenty-day period upon payment of such additional fee as may be prescribed by the commission and upon compliance with all conditions required in this section and section 281-31. When a temporary license has expired and no permanent license has been issued, the sale and service of liquor shall cease until the permanent license is issued; provided that, when applicable, the license shall be properly renewed;
- (6) A temporary license shall authorize the licensee to purchase liquor only by payment in currency, check, or certified check for the liquor before or at the time of delivery of the liquor to the licensee[-], except as otherwise provided by commission rule; and
- (7) Sections 281-52 and 281-54 and sections 281-56 to 281-61 shall not apply to any application for a temporary license.”

SECTION 7. Section 281-35, Hawaii Revised Statutes, is amended to read as follows:

“§281-35 **Special conditions; club licenses.** No liquor shall be sold under a club license to any person not a member of the club nor a guest thereof enjoying the [~~privilege~~] privileges of membership, but a member or a guest enjoying the privileges of membership may purchase liquor for consumption on the premises by the person’s own guests.

The liquor commission may by [~~regulations~~] rule require the keeping and posting of lists of the members of a club, and the keeping and production of records as to membership and the registration of guests enjoying the privileges of membership.

No liquor shall be sold or kept for sale at any club except by the club itself pursuant to its license. If any liquor is sold or kept on the club premises for sale or barter by any member, employee, or person other than the club itself, the club shall be deemed to be selling without a license [~~whether it holds its own license or not~~].”

SECTION 8. Section 281-39, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except for a condominium hotel operator under a class 15 license, no change of premises under any issued license shall be allowed unless the doing of business on the new premises is authorized in the same manner as provided by this chapter for approval of any original premises; provided that the holder of any manu-



facturer's license or a wholesale dealer's license issued by the commission of any county may, through authorized solicitors or representatives, solicit and take orders for direct shipment ~~[for]~~ of liquor in permitted quantities in any other county."

SECTION 9. Section 281-45, Hawaii Revised Statutes, is amended to read as follows:

**"§281-45 No license issued, when.** No license shall be issued under this chapter:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned (except that the commission may grant a license under this chapter to a corporation that has been convicted of a felony where the commission finds that the organization's officers and shareholders of twenty-five per cent or more of outstanding stock are fit and proper persons to have a license), or to any other person not deemed by the commission to be a fit and proper person to have a license;
- (2) To a corporation the officers and directors of which, or any of them, would be disqualified under paragraph (1) ~~[of this section]~~ from obtaining the license individually, or a stockholder of which, owning or controlling twenty-five per cent or more of the outstanding capital stock, or to a general partnership, limited partnership, limited liability partnership, or limited liability company whose partner or member holding twenty-five per cent or more interest of which, or any of them would be disqualified under ~~[that]~~ paragraph (1) from obtaining the license individually;
- (3) Unless the applicant for a license or a renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency a signed certificate from the director of taxation and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the state or federal governments any delinquent taxes, penalties, or interest; or
- (4) To any applicant who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under this chapter."

SECTION 10. Section 281-52, Hawaii Revised Statutes, is amended to read as follows:

**"§281-52 Public hearing.** No license shall be granted except after a public hearing by the liquor commission upon notice as prescribed in this chapter; provided that ~~[section]~~ sections 281-57 to 281-60 shall not apply to the holder of a restaurant general license, a wholesale general license, ~~[or]~~ a retail general license, or a dispenser's general license, who applies for a different kind of license within the class of the holder's existing license, on the same premises, or to the holder of a cabaret license who applies for a dispenser license of any kind, on the same premises, or to the holder of a dispenser's beer and wine license who applies for dispenser's beer license, on the same premises, or to a licensee whose licensed premises have been demolished and replaced by another building on the same premises and who applies for the same or lesser kind of the same class of liquor license previously held by the licensee on said premises."

SECTION 11. Section 281-53, Hawaii Revised Statutes, is amended to read as follows:

**“§281-53 Application; penalty for false statements.** Every application for a license or for the renewal of a license or for the transfer of a license shall be in writing, signed and, except for the renewal of a license, verified by the oath of the applicant, or in the case of a corporation or unincorporated association by the proper officer or officers thereof, or if a partnership by a general partner thereof, or if a limited liability partnership by a partner thereof, or if a limited liability company by a member thereof, made before any official authorized by law to administer oaths, and shall be addressed to the liquor commission, and set forth:

- (1) The full name, age, and place of residence of the applicant; if a copartnership, the names, ages, and respective places of residence of all the partners; if a limited liability company, its full name and the names of all its members; if a corporation or joint-stock company, its full name and the names of its officers and directors, and the names of all stockholders owning twenty-five per cent or more of the outstanding capital stock; and if any other association of individuals, the names, ages, and respective places of residence of its officers and the number of its members;
- (2) A particular description of the place or premises where the proposed license is to be exercised, so that the exact location and extent thereof may be clearly and definitely determined therefrom;
- (3) The class and kind of license applied for; and
- (4) Any other matter or information pertinent to the subject matter which may be required by the rules ~~and regulations~~ of the commission.

If any false statement is knowingly made in any application which is verified by oath, the applicant, and in the case of the application being made by a corporation, limited liability company, association, or club, the persons signing the application, shall be guilty of perjury, and shall be subject to the penalties prescribed by law for such offense. If any false statement is knowingly made in any application which is not verified by oath, the person or persons signing the application shall be guilty of a misdemeanor and upon conviction thereof shall be punished as in section 281-102 provided.”

SECTION 12. Section 281-56, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) On every application referred to the investigator under section 281-55, the investigator shall report in writing to the liquor commission and, if the application is for a license of any class other than ~~class 7,~~ class 8, ~~or~~ class 9, or class 10, such report shall ~~show:~~ include:

- (1) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions, including the relationship to surrounding residences which may share a common boundary or a common structure with the premises proposed for licensing;
- (2) If the application is made by a person who has held a prior license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license;
- (3) The locality of any church, chapel, or school, if any, within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of the church, chapel, or school grounds;
- (4) The number, position, and distance from the premises, in respect of which a license is applied for, of any other licensed premises of the same class in the neighborhood;

- (5) The number of licenses of the same class or kind already issued and being lawfully exercised within the county;
- (6) Whether or not in the opinion of the investigator the applicant is a fit and proper person to have a license;
- (7) Whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not the applicant has complied with all the requirements of this chapter relative to the making and filing of the applicant's application;
- (8) For the next application for a license that was previously denied, refused, or withdrawn, evidence, to be provided by the applicant, of a substantial change in the circumstances that caused the previous denial, refusal, or withdrawal; and
- (9) Any and all other matters and things, ~~[which]~~ that in the judgment of the investigator pertain to or affect the matter of the application, or the issuance or the exercise of the license applied for; provided that when the license application is for premises within a county ~~[encompassing]~~ with a population of ~~[500,000]~~ five hundred thousand residents or more, the report shall specify the possible adverse effects the premises, after licensing, may have on the surrounding community."

SECTION 13. Section 281-57, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

"(b) If no preliminary hearing is had or if the application is not denied upon a preliminary hearing, the commission shall fix a day for the public hearing of the application (other than an application for an alcohol license or a license in classes [7] 8 to 10 and 13) and shall give public notice of the hearing at least once in each of two consecutive weeks, in the county, the date of the hearing to be not less than forty-five days after the first notice. The notice shall require that all protests or objections against the issuance of the license applied for shall be filed with the administrator of the commission at or before the time of hearing. Before giving the notice the commission shall collect from the applicant the cost of giving the public notice or require a deposit to cover the same.

(c) Immediately upon the commission's fixing a day for the public hearing of the application, the applicant shall mail a notice setting forth the time and place of the hearing on the application to each of the following:

- (1) Not less than two-thirds of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing body of the shareholders association situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment; provided that in meeting this requirement, the applicant shall mail a notice to not less than three-fourths of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of one hundred feet from the nearest point of the premises for which the license is asked. Notice by mail may be addressed to the last known address of the person concerned or to the address as shown in the last tax return filed by the person or the person's agent or representative;
- (2) In counties with a population of ~~[two hundred fifty thousand]~~ five hundred thousand or more, not less than two-thirds of the registered voters residing within, and small businesses situated within, a distance of five hundred feet from the nearest point of the premises for which the license is asked; provided that in meeting this requirement, the applicant

- shall mail notices to not less than three-fourths of the registered voters residing within, and small businesses situated within, a distance of one hundred feet from the nearest point of the premises for which the license is asked. This paragraph shall not apply to ~~[any applicant that is a hotel as defined in section 486K-1, a condominium hotel, a restaurant, or a convenience store.]~~ applications for class 2, class 4, class 12, and class 15 licenses. A notice sent pursuant to this paragraph shall be addressed to the “occupant” of the residential unit or small business; and
- (3) For each condominium project and cooperative apartment within the five hundred-foot area, one notice of the hearing shall be sent by mail addressed “To the Residents, Care of the Manager”, followed by the name and address of the condominium or cooperative apartment involved.

The notices required under this subsection shall be mailed at least forty-five days prior to the date set for the hearing. No promotional information shall be allowed on, or accompany the notice. Before the hearing, and within seven business days of having mailed the notices, the applicant shall file with the commission an affidavit that the notices have been mailed in compliance with this subsection. In addition to the affidavit (which shall be made available within the same ~~[seven-day]~~ seven-business-day period with proof of having mailed the notices), the applicant shall include both a master list of one hundred per cent of addressees and addresses required by paragraphs (1), (2), and (3), and another mailing list consisting of the portion of addressees and their respective addresses who were mailed the notice purposely needed to meet the requirements of paragraphs (1), (2), and (3). The affidavit, master list, and mailing list shall be made available within seven business days (of the mailing of the notice by the applicant) by the commission for public review upon request. For purposes of this section, “master list” means every owner and lessee who would otherwise be required to receive notice of the public hearing according to the requirement of paragraphs (1), (2), and (3), even if they were not actually included in the two-third or three-fourths requirement (as the case may be) of paragraph (1) or (2), and every condominium project and cooperative apartment qualifying in paragraph (3). ~~[The commission shall cancel the hearing if not receiving the affidavit prior to the hearing or if discovering that the affidavit is false.]~~ When the requirements of this section have not been met, the commission may cancel the hearing or continue the public hearing subject to the provisions of section 281-57 and this section.

(d) For purposes of this section, notice to one co-owner and one co-lessee of real estate shall be sufficient notice to all co-owners and all co-lessees of that real estate; and one notice is sufficient to an owner or lessee of multiple parcels; except that one notice shall be sent to each individual unit of a cooperative apartment as provided in this section.”

SECTION 14. Section 281-58, Hawaii Revised Statutes, is amended to read as follows:

**“§281-58 Protests.** Protests against the granting of a license may be filed by any person. Protests against the granting of a license upon such application, which qualifies for an automatic refusal pursuant to section 281-39.5 or 281-59, may be so filed by any registered voter for the area within five hundred feet of the nearest point at which the applicant proposes to establish or continue the applicant’s business under the license applied for, or by any owner or lessee of record of real estate or by any owner of record of a share in a cooperative apartment situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment.”

SECTION 15. Section 281-59, Hawaii Revised Statutes, is amended<sup>1</sup> amending subsections (a) and (b) to read as follows:

“(a) Upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application and any protests and objections to the granting thereof, and hear the parties in interest. The liquor commission shall accept all written or oral testimony for or against the application whether the application is denied, refused, or withdrawn. Within fifteen days after the hearing, or within thirty days thereafter if in its discretion the commission extends the fifteen days to thirty days, and gives public notice of same, the commission shall give its decision granting or refusing the application; provided that if a majority of the:

- (1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or
- (2) Owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked<sup>[;]</sup>,

have duly filed or caused to be filed their protests against the granting of the license, or if there appears any other disqualification under this chapter, the application shall be refused. Otherwise, the commission may in its discretion grant or refuse the same.

For purposes of defining “a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment”, each property counts only once<sup>[-]</sup>; provided that roadways shall not be included. A protest submitted by the majority of the co-owners or the majority of the co-lessees of a property shall constitute a protest by all the owners or lessees of record of that property. ~~[Owners]~~ A protest filed by owners or lessees who own more than one property [may count] shall be counted for each property.

(b) The liquor commission shall make available to the applicant and any protester for review before the public hearing, the protest list of those persons who filed a protest or objection to the application; provided that the applicant shall not use the protest list to attempt to influence in any way any protester to withdraw the protest or objection. All applicants and protesters may submit corrections, additions, and subtractions to the master list and the protest list at the public hearing<sup>[-]</sup>; provided that additions or corrections to the voter registration list shall be certified by the clerk of the county. The liquor commission shall rule on proposed corrections, additions, and subtractions and give reasons for the ruling.”

SECTION 16. Section 281-61, Hawaii Revised Statutes, is amended to read as follows:

“**§281-61 Renewals.** (a) Other than for good cause, the renewal of an existing license shall be granted upon the filing of an application; provided that if:

- (1) Complaints from the public;
- (2) Reports from the commission’s investigators; or
- (3) Adjudications of the commission or the liquor control adjudication board,

indicate that noise created by patrons departing from the premises disturbs residents on the street or of the neighborhood in which the premises are located, or that noise from the premises or adjacent related outdoor areas ~~[under the licensee’s control]~~ such as parking lots or lanais exceed standards contained in state or county noise codes ~~[and]~~ or intrudes into nearby residential units, the commission may deny the renewal application or withhold the issuance of a renewed license until corrective measures meeting the commission’s approval are taken.

(b) The commission<sup>[-]</sup> or board, pursuant to section 281-17, at the time of renewal or at any time, may revoke, suspend, or place conditions or restrictions on any

license issued under this chapter for the purpose of preventing activities within the licensed premises or adjacent areas [~~under the licensee's control~~] that are potentially injurious to the health, safety, and welfare of the public and neighborhood including but not limited to criminal activity, including assault, drug dealing, drug use, or prostitution, upon [~~petition of the administrator of the appropriate county agency,~~] proper notice to the licensee, and a hearing before the commission pursuant to chapter 91.”

SECTION 17. Section 281-62, Hawaii Revised Statutes, is amended to read as follows:

**“§281-62 Reduction or increase in area of licensed premises.** The liquor commission may, in its discretion, permit the reduction or the increase in the area of the licensed premises of any licensee~~[-]~~ without publication of notice at a public hearing; provided that, where an increase in premises may significantly impact the public, the commission may require hearings pursuant to sections 281-39.5 and 281-57 to 281-60. Whenever any reduction or increase is permitted, the same shall be endorsed in some appropriate manner upon the license.”

SECTION 18. Section 281-32.3, Hawaii Revised Statutes, is repealed.

SECTION 19. Statutory material to be repealed is bracketed and stricken.<sup>2</sup> New statutory material is underscored.

SECTION 20. This Act shall take effect on July 1, 2008.

(Approved June 12, 2008.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 169

H.B. NO. 2810

A Bill for an Act Relating to Water Rates.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Agriculture in Hawaii depends on many factors, including access to water for irrigation purposes at affordable rates. Although many farmers are able to access lower agricultural water rates provided by the county water systems, other farmers who are unable to access the county water systems must rely on the more expensive residential water rates provided by public utilities. Without affordable water rates, agriculture cannot be sustainable and competitive in Hawaii.

The legislature finds that it is in the public interest to promote the long-term viability of agriculture by establishing mechanisms that provide for preferential rates for potable water used for agricultural activities.

The purpose of this Act is to establish a policy of providing preferential potable water rates for agricultural activities and to authorize the public utilities commission to establish preferential water rates for potable water used for agricultural activities.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§269- Preferential water rates for agricultural activities. (a) It is the policy of the State to promote the long-term viability of agriculture by establishing mechanisms that provide for preferential rates for potable water for agricultural activities. The public utilities commission shall have the authority to establish preferential rates for potable water used for agricultural activities in a public utility’s service area.

(b) Upon receipt of a bona fide request for preferential rates for potable water to be used for agricultural activities, and proof that the customer engages in agricultural activities, a public utility shall provide proposed preferential rates for potable water to be used only for qualified agricultural activities to the public utilities commission for approval. All such rates approved by the public utilities commission shall be subsidized by the potable water rates charged to other customers of the public utility if required as determined by the public utilities commission. In reviewing the proposed preferential rates, the public utilities commission, in consultation with the department of agriculture, may establish additional criteria to qualify bona fide agribusinesses for water used solely for agricultural activities. For rate cases initiated pursuant to this section, the public utilities commission shall allow the recovery of any reasonable unamortized costs incurred by the public utility in its previous rate case; provided however, upon full amortization of these costs, rates shall be adjusted accordingly.”

SECTION 3. Section 269-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Agricultural activities” means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 12, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 170

S.B. NO. 2245

A Bill for an Act Relating to Unattended Children in Motor Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that leaving a child unattended in a car can too often have tragic consequences, either because the child suffers from exposure to excessive heat, is injured when the car is stolen, or releases the emergency brake, inadvertently starts the car, or puts the car in gear. On average, thirty-six children per year across the country die in hot vehicles. About forty per cent of those deaths occur when caregivers forget that children are in the car. About twenty per cent of children who die are intentionally left in vehicles by caregivers who do not know any better.

The legislature notes that with an outside temperature of approximately eighty-five degrees, the inside air temperature in a car will reach one hundred-thirty degrees or more. Under those conditions, a small child, whose body temperature increases three to five times faster than an adult's, can succumb to the heat in as short a time as fifteen minutes. External temperatures as low as sixty-six degrees can be fatal. As a result, the five-minute trip to the bank that ends up taking a half-hour can be deadly.

The legislature further finds that Hawaii is not immune to this problem. Four times within seven months in 2005, children were left in cars that were stolen. Since 2003, three children have died from heat stroke after being left unattended in a car by a parent or caregiver. Parents and caregivers know it is not safe to leave children home alone and unattended, but they continue to leave children unattended in a car even though it is just as dangerous, or more so. Accordingly, the legislature declares that it is the policy of the State that children should never be left unattended in vehicles under any circumstances. Stronger laws would also give law enforcement a preventive tool with which to work, similar to the effect of seat belt and child safety seat laws.

The legislature also finds that under current law, a police officer has only two choices when confronted with children left unattended in a car: either try to educate the parent or caregiver with a stern lecture or call child protective services and initiate a case for child endangerment. Since there is no law prohibiting this conduct, the first option provides little leverage to change it. The second option may be too draconian under the particular circumstances at hand. While current law permits institution of criminal charges in egregious circumstances, a sanction that is less severe is appropriate to deter this conduct when the circumstances do not warrant a criminal prosecution. State law already takes a similar approach to speeding, for example. Police officers are authorized to issue citations for speeding if the circumstances do not warrant, for example, arresting the driver for reckless driving. It simply makes no sense to say that we should not, for example, issue speeding tickets because the driver can always be charged with negligent homicide or manslaughter if someone happens to be killed by the speeding driver.

It is the purpose of this Act to protect the children of Hawaii by prohibiting operators and adult passengers of motor vehicles from leaving the vehicle with an unattended child inside for five minutes or more. This Act makes such conduct a violation of the statewide traffic code, not a crime, for which a violator may only be fined. Together with requirements that the knowledge of the prohibition be tested on the driver's examination and that rental car companies provide notice of the prohibition to renters, this prohibition will provide one more tool with which the police may take concrete action to protect Hawaii's children. Although Hawaii has criminal laws that can be used to sanction this behavior when injury or death results, it will be too late for the child in that case. Hawaii needs a way to deter this conduct when the child is not injured or killed, but before the ultimate tragedy strikes.

SECTION 2. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§291C- Leaving a child unattended in a motor vehicle.** (a) Notwithstanding chapter 571 or any other law to the contrary, a person violates this section if the person, being the operator or an adult passenger of a motor vehicle, leaves the motor vehicle for five minutes or longer when an unattended child is inside the vehicle, regardless of whether the operator or adult passenger is charged with the care or custody of the child.

(b) Any law enforcement officer, firefighter, or rescue team personnel who observes a child left unattended in a motor vehicle and determines that the unat-



tended child is in physical danger, or poses a danger to others, may use whatever means are reasonably necessary to protect the child or others and remove the child from the motor vehicle. If the person who left the motor vehicle with an unattended child inside cannot be located within a reasonable time, the law enforcement officer, firefighter, or rescue team personnel, upon removing the child from the motor vehicle, shall immediately report the matter to a police officer, as defined under section 587-2, who may assume protective custody of the child without a court order and without the consent of the child's family.

(c) Law enforcement officers, firefighters, and rescue team personnel shall not be liable in any civil action to any party for any act performed in good faith under this section.

(d) As used in this section:

“Child” means a person under the age of nine.

“Rescue team personnel” means physicians, basic life support personnel, advanced life support personnel, surgeons, nurses, volunteers, or employees of the owners or operators of a hospital or authorized emergency vehicle who have been trained in basic or advanced life support and have been charged by the owners or operators of the hospital or authorized emergency vehicle with providing life support and resuscitation to persons who are in immediate danger of loss of life in cases of emergency.

“Unattended” means leaving a child:

- (1) Alone in a motor vehicle; or
- (2) In a motor vehicle with a minor under the age of twelve.”

SECTION 3. Section 286-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in section 286-107.5(a), the examiner of drivers shall examine every applicant for a driver’s license, except as otherwise provided in this part. The examination shall include a test of:

- (1) The applicant’s eyesight and any further physical examination that the examiner of drivers finds necessary to determine the applicant’s fitness to operate a motor vehicle safely upon the highways;
- (2) The applicant’s ability to understand highway signs regulating, warning, and directing traffic;
- (3) The applicant’s knowledge of the rules of the road based on the traffic laws of the State and the traffic ordinances of the county where the applicant resides or intends to operate a motor vehicle; provided that the examination shall specifically test the applicant’s knowledge of the provisions of section 291C- ; and
- (4) The actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

The examinations shall be appropriate to the operation of the category of motor vehicle for which the applicant seeks to be licensed and shall be conducted as required by the director.

The examiner of drivers shall require every applicant to comply with section 286-102.5.

The examiner of drivers may waive the actual demonstration of ability to operate a motorcycle or motor scooter for any person who furnishes evidence, to the satisfaction of the examiner of drivers, that the person has completed the motorcycle education course approved by the director in accordance with section 431:10G-104.

At the time of examination, an application for voter registration by mail shall be made available to every applicant for a driver’s license.

For the purposes of this section, the term “applicant” does not include any person reactivating a license under section 286-107.5(a).”

SECTION 4. Section 437D-13, Hawaii Revised Statutes, is amended<sup>1</sup> amending its title and subsection (a) to read as follows:

**~~“§437D-13 Notice and posting required concerning [seat belt, child passenger restraint, and operating a vehicle under the influence] motor vehicle laws.~~** (a) Every lessor shall display at all times in a conspicuous place in each rental motor vehicle offered to the public, a decal, written in plain language and in no less than ten-point type, that informs the lessee of:

- (1) Hawaii’s seat belt and child passenger restraint laws and the prohibition against operating a vehicle under the influence of an intoxicant[;] and leaving a child unattended in a motor vehicle; and
- (2) The existence and location of additional information concerning the laws relating to seat belts, child passenger restraints, ~~and~~ operating a vehicle under the influence of an intoxicant[-], and leaving a child unattended in a motor vehicle.

The requirements and penalties of Hawaii’s seat belt laws and child passenger restraint laws, as provided in sections 291-11.5 and 291-11.6, and the prohibition against and penalties for operating a vehicle under the influence of an intoxicant, as provided in section 291E-61, and leaving a child unattended in a motor vehicle, as provided in section 291C-, shall be printed on a card which shall be placed in the glove compartment of every rental motor vehicle offered to the public.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 7. This Act shall take effect upon its approval; provided that sections 3 and 4 shall take effect on October 1, 2008; and further provided that the amendments made to section 286-108, Hawaii Revised Statutes, shall not be repealed when that section is repealed and reenacted on January 9, 2011, by Act 72, Session Laws of Hawaii 2005.

(Approved June 13, 2008.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 171

H.B. NO. 3377

A Bill for an Act Relating to Highway Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. Numerous steps have been taken by the legislature over the past 25 years to address the toll exacted from our community by those who operate a motor vehicle under the influence of alcohol or drugs, or both. These include providing increased criminal penalties, from larger fines and longer license suspensions and prison terms to forfeiture of the motor vehicle involved in the crime. New criminal offenses have been created, from causing death with a motor vehicle while under the

influence of alcohol or drugs to habitually driving under the influence. Administrative license revocation has been enacted to quickly revoke the driver's license while the courts determine what penalties are appropriate. Special attention has been given to repeat offenders, offenders who are highly intoxicated, youthful offenders, and those who drive under the influence with a child in the vehicle.

The legislature also finds that, while gains have been made in reducing both driving under the influence arrests and the total number of alcohol-related fatalities, today's offender is more likely to have a highly elevated alcohol concentration and, as a whole, Hawaii's rate of alcohol-related fatalities remains unacceptably high. At the same time, people whose licenses have been revoked still need to get to work, to transport their families, and to fulfill other obligations, and there often is no efficient alternative to driving. Just as there is no single cause of this problem, there is no single solution, and Hawaii needs another tool to address it. Hawaii needs a tool to stop people from drinking, then driving, and from driving, then drinking.

The purpose of this Act is to implement use of an ignition interlock device to prevent drivers previously arrested for driving under the influence from starting or operating a motor vehicle with more than a minimal alcohol concentration while their case is pending or while their license is revoked. Rather than prohibiting driving and taking custody of the motor vehicle registration, number plates, or even the car itself, this Act requires installation of an ignition interlock device shortly after arrest so that the person can drive, but is prevented from drinking and driving, during the pendency of the case and the revocation period thereafter. Thus, the requirement of installation of an ignition interlock device would replace the provisions to take custody of the motor vehicle registration and number plates and to issue conditional license permits.

This Act also provides for an extended period of probation supervision of the driver while using the ignition interlock device so that the person cannot drink and drive during that period. Attempts to do so will be recorded and reported for appropriate action, including extension of the period of required ignition interlock device use and other sanctions. Most importantly, probation supervision, using test results and other information generated by the device, can be an important bridge to getting the driver into treatment so that, once the device is removed, the driver possesses the tools to refrain from drinking and driving altogether. Recognizing the need to resolve a number of outstanding issues in the transition to requiring installation of ignition interlock devices, this Act establishes a task force to study these issues and make recommendations for implementation of the use of the ignition interlock device, which would take effect July 1, 2010.

SECTION 2. Chapter 291E, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

**“§291E-A Ignition interlock special fund; surcharge; indigents.** (a) There is established in the state treasury a special fund to be known as the ignition interlock special fund to be administered by the director of transportation. The fund shall consist of amounts collected under this section and section 291E-B. Moneys in the fund shall be expended by the director of transportation to fund the cost of installing and operating ignition interlock devices in the vehicles of persons who are required to install the device but who are indigent persons, as determined under subsection (d).

(b) Every person who installs an ignition interlock device pursuant to this chapter shall pay the ignition interlock device vendor a surcharge of \$ \_\_\_\_\_ when the device is installed. The surcharge shall be remitted by the ignition interlock device vendor to the director of transportation within ten days following the end of the month in which the surcharge was collected. The surcharges collected by the vendor pursuant to this subsection shall not be subject to any tax, fee, or other assessment,

nor are they considered revenue of the vendor. The director of transportation shall deposit the surcharge amounts into the ignition interlock special fund.

(c) The cost of installing and operating ignition interlock devices required by this chapter or chapter 804 for indigent persons shall be paid by the director of transportation from the ignition interlock special fund. Whether a person is an indigent person shall be determined pursuant to subsection (d) by the director or the court, as appropriate.

(d) For purposes of this section, "indigent person" means:

- (1) Any individual whose income is not greater than one hundred twenty-five per cent of the official poverty line established by the Secretary of Health and Human Services under the Community Services Block Grant Act, 42 United States Code Section 9902; or
- (2) Any individual who is eligible for free services under the Older Americans Act or Developmentally Disabled Act.

**§291E-B Certification.** (a) The director of transportation shall establish and administer a statewide program relating to certification and monitoring of ignition interlock devices installed pursuant to chapter 291E or 804 and the vendors who install and maintain them.

(b) The program shall include standards and procedures for the certification of ignition interlock devices installed pursuant to chapter 291E or 804. At a minimum, the standards shall require that the devices:

- (1) Be certified by a nationally recognized certification organization to meet or exceed all standards and specifications provided as guidelines by the National Highway Traffic Safety Administration. "Nationally recognized certification organization" means a testing laboratory or analytical chemist not affiliated with a manufacturer of ignition interlock devices that is qualified to test ignition interlock devices or reference samples and is approved by the United States Department of Transportation. The nationally recognized certification organization must be able to administer performance tests of an ignition interlock device or a sample provided by the vendor;
- (2) Operate using an alcohol-specific sensor technology;
- (3) Employ a digital camera by which a photograph of the person using the device can be incorporated into the electronic record generated by each use of the device;
- (4) Require a rolling retest by which the driver must, within a specified period of time or distance driven after starting the vehicle, be retested and found to have an alcohol concentration of less than .02, with a margin of error of .01; and
- (5) Generate a record of vehicle usage, including dates, times, and distances driven.

(c) The program shall include standards and procedures for the certification for vendors who install and maintain ignition interlock devices pursuant to chapter 291E or 804. At a minimum, the standards shall require that vendors:

- (1) Install only an ignition interlock device that is certified pursuant to this section;
- (2) Offer or contract for ignition interlock device installation and maintenance statewide;
- (3) Train drivers who are required to install an ignition interlock device, pursuant to chapter 291E or 804, in how to use the device;
- (4) Schedule the driver for all necessary readings and maintenance of the device; and
- (5) Provide periodic reports regarding the use of each ignition interlock device installed pursuant to chapter 291E or 804, including incidents

of test failure, attempts to circumvent the device, and dates, times, and distances the vehicle was driven.

(d) Each vendor who sells or installs an ignition interlock device pursuant to chapter 291E or 804 shall be certified annually by the director of transportation pursuant to this section and the rules adopted thereunder. The vendor shall pay a certification fee to the director of transportation who shall deposit the fee into the ignition interlock special fund established pursuant to section 291E-A.

(e) The director of transportation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 3. Chapter 291E, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**“§291E-C Ignition interlock permits; driving for employment.**

- (a)(1) Except as provided in paragraph (2), upon proof that the respondent has installed an ignition interlock device in the respondent’s vehicle, the director shall issue an ignition interlock permit that will allow the respondent to drive a vehicle equipped with an ignition interlock device during the revocation period; or
- (2) Notwithstanding any other law to the contrary, the director shall not issue an ignition interlock permit to:
  - (A) A respondent whose license is expired, suspended, or revoked as a result of action other than the instant revocation; or
  - (B) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver’s license under section 286-239(b) unless the ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b).
- (b)(1) The director may issue a separate permit authorizing a respondent to operate a vehicle owned by the respondent’s employer during the period of revocation without installation of an ignition interlock device if the respondent is gainfully employed in a position that requires driving and the respondent will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.
- (2) A request made pursuant to paragraph (1) shall be accompanied by:
  - (A) A sworn statement from the respondent containing facts establishing that the respondent currently is employed in a position that requires driving and that the respondent will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and
  - (B) A sworn statement from the respondent’s employer establishing that the employer will, in fact, discharge the respondent if the respondent is prohibited from driving a vehicle not equipped with an ignition interlock device and identifying the specific vehicle and hours of the day the respondent will drive, not to exceed twelve hours per day, for purposes of employment.
- (c) A permit issued pursuant to subsection (b) shall include restrictions allowing the respondent to drive:
  - (1) Only during specified hours of employment, not to exceed twelve hours per day, and only for activities solely within the scope of the employment;
  - (2) Only the vehicle specified; and
  - (3) Only if the permit is kept in the respondent’s possession while operating the employer’s vehicle.

In addition, the director may impose other appropriate restrictions.”

SECTION 4. Section 291E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Ignition interlock device” means a device certified by the director of transportation and approved for use pursuant to section 291E-B and rules adopted thereunder that, when affixed to the ignition system of a motor vehicle, prevents the vehicle from being started without first testing, and thereafter from being operated without periodically retesting, a deep-lung breath sample of the person required to use the device that indicates the person’s alcohol concentration is less than .02.”

SECTION 5. Section 291E-34, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The notice shall state that, if the administrative revocation is sustained at the hearing, a written decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

- (1) The effective date of the administrative revocation;
- (2) The duration of the administrative revocation;
- ~~(3) If applicable, the date by which any outstanding motor vehicle number plates issued to the respondent must be surrendered to the director;~~
- ~~(4) If applicable, that failure to surrender any motor vehicle number plates as required is a misdemeanor;~~
- ~~(5) (3) Other conditions that may be imposed by law[;], including the use of an ignition interlock device; and~~
- ~~(6) (4) The right to obtain judicial review.”~~

SECTION 6. Section 291E-41, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-41 Effective date, conditions, and period of administrative revocation; criteria.** (a) Unless an administrative revocation is reversed or the temporary permit~~], and temporary motor vehicle registration and temporary number plates if applicable, are]~~ is extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section 291E-44, no license and privilege to operate a vehicle~~], nor motor vehicle registration and number plates if applicable,]~~ shall be restored under any circumstances~~], and no conditional license permit shall be issued]~~ during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section 291E-45.

(b) Except as provided in paragraph (6) and in section 291E-44, the respondent shall keep an ignition interlock device installed and operating on any vehicle the respondent operates during the revocation period. Except as provided in section 291E-A, installation and maintenance of the ignition interlock device shall be at the respondent’s own expense. The periods of administrative revocation with respect to a license and privilege to operate a vehicle~~], and motor vehicle registration if applicable,]~~ that shall be imposed under this part are as follows:

- (1) A minimum of three months up to a maximum of one year revocation of license and privilege to operate a vehicle, if the respondent’s record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) For a respondent who is a highly intoxicated driver, if the respondent’s record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued, a minimum of six months up to a maxi-

imum of one year revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the highly intoxicated driver; provided that the highly intoxicated driver shall not qualify for a conditional license permit under section 291E-44];~~

- (3) A minimum of one year up to a maximum of two years revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the respondent],~~ if the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (4) A minimum of two years up to a maximum of four years revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the respondent],~~ if the respondent's record shows two prior alcohol enforcement contacts or drug enforcement contacts during the ~~[seven]~~ five years preceding the date the notice of administrative revocation was issued;
- (5) ~~[Lifetime]~~ A minimum of five years up to a maximum of ten years revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the respondent and a lifetime prohibition on any subsequent registration of motor vehicles by the respondent],~~ if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the ~~[ten]~~ five years preceding the date the notice of administrative revocation was issued; or
- (6) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, revocation of license and privilege to operate a vehicle ~~[either for the period remaining until the respondent's eighteenth birthday or, if applicable,] for the appropriate revocation period provided in paragraphs (1) to (5) or in subsection [(d); whichever is longer and such respondents shall not qualify for a conditional permit;] (c); provided that the respondent shall be prohibited from driving during the period preceding the respondent's eighteenth birthday and shall thereafter be subject to the ignition interlock requirement of this subsection for the balance of the revocation period;~~

provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later.

~~[(e) Whenever a motor vehicle registration is revoked under this part, the director shall cause the revocation to be entered electronically into the motor vehicle registration file of the respondent.]~~

~~(d)~~ (c) If a respondent has refused to be tested after being informed:

- (1) That the person may refuse to submit to testing in compliance with section 291E-11; and
- (2) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15,

the revocation imposed under subsection (b)(1), (3), (4), and (5) shall be for a period of one year, two years, four years, and ~~[a lifetime;] ten years,~~ respectively.

~~[(e) In addition to subsection (d), any motor vehicle registration of a respondent who is a repeat intoxicated driver and who refused to be tested after being informed:]~~

- (1) That the person may refuse to submit to testing in compliance with section 291E-11; and

- (2) ~~Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15;~~

~~shall be revoked for the periods specified in subsection (d), and the respondent shall be prohibited from subsequently registering any motor vehicle for the applicable revocation period.~~

(f) (d) Whenever a license and privilege to operate a vehicle is administratively revoked under this part, the respondent shall be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance abuse or dependence warrants treatment, the director shall so order. All costs for assessment and treatment shall be paid by the respondent.

(g) (e) Alcohol and drug enforcement contacts that occurred prior to January 1, 2002, shall be counted in determining the administrative revocation period.

(h) (f) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a revocation under subsection (b)(1)."

SECTION 7. Section 291E-44, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:

**"§291E-44 Conditional license and ignition interlock permits.**

- (a) (1) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section 291E-41(b)(1), may issue either a conditional license permit ~~[that will]~~ pursuant to this section or an ignition interlock permit pursuant to section 291E-C. If the director issues a conditional license permit pursuant to this section, the permit shall allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period; provided that one or more of the following conditions are met:
- (A) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or
- (B) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 291E-41; or
- (2) Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to:
- (A) A respondent whose license, during the conditional license permit period, is expired, suspended, or revoked as a result of action other than the instant revocation for which the respondent is requesting a conditional license permit under this section;
- (B) A respondent who has refused breath, blood, or urine tests for purposes of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable;
- (C) A respondent who is a highly intoxicated driver; and
- (D) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b) unless the conditional license permit is restricted to a category 1, 2, or 3 license under section 286-102(b)."



SECTION 8. Section 291E-61, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-61 Operating a vehicle under the influence of an intoxicant. (a)**

A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person’s normal mental faculties or ability to care for the person and guard against casualty;
- (2) While under the influence of any drug that impairs the person’s ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or
- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows ~~[without possibility of probation or suspension of sentence]:~~

- (1) Except as provided in ~~[[paragraph]] paragraphs (2)[;] and (5)~~, for the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a)~~[;]~~, and notwithstanding section 706-623, by probation for not less than one year nor more than two years on the following conditions:
  - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
  - (B) (i) Ninety-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs; or
    - (ii) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (2) For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly intoxicated driver not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a)~~[;]~~, and notwithstanding section 706-623, by probation for not less than two years nor more than four years on the following conditions:

- (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
  - (B) ~~[Prompt suspension of a license and privilege to operate a vehicle for a period of six months with an absolute prohibition from operating a vehicle during the suspension period;]~~ A two-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
    - (iii) A fine of not less than \$150 but not more than \$1,000; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (3) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a)~~[by:]~~, and notwithstanding section 706-623, by probation for not less than two years nor more than four years on the following conditions:
- (A) ~~[Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;]~~ A two-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;
  - (C) A fine of not less than \$500 but not more than \$1,500; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (4) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a)~~[:]~~, and notwithstanding section 706-623, by probation for not less than three years nor more than five years on the following conditions:
- (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) ~~[Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;]~~ Three-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - ~~[(E) Forfeiture under chapter 712A of the vehicle owned and operated by the person committing the offense; provided that the department of transportation shall provide storage for vehicles forfeited under this subsection; and]~~

- (5) [Any] In addition to a sentence imposed under paragraphs (1) through (4), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1), (3), or (4). Notwithstanding paragraph (1), the probation period for a person sentenced under this paragraph shall be not less than two years.

(c) Notwithstanding any other law to the contrary, the court shall not issue an ignition interlock permit to:

- (1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense; or
- (2) A defendant who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b).

(d) The court may issue a separate permit authorizing a defendant to operate a vehicle owned by the defendant's employer during the period of revocation without installation of an ignition interlock device if the defendant is gainfully employed in a position that requires driving and the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.

(e) A request made pursuant to subsection (d) shall be accompanied by:

- (1) A sworn statement from the defendant containing facts establishing that the defendant currently is employed in a position that requires driving and that the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and
- (2) A sworn statement from the defendant's employer establishing that the employer will, in fact, discharge the defendant if the defendant is prohibited from driving a vehicle not equipped with an ignition interlock device and identifying the specific vehicle and hours of the day, not to exceed twelve hours per day, the defendant will drive for purposes of employment.

(f) A permit issued pursuant to subsection (d) shall include restrictions allowing the defendant to drive:

- (1) Only during specified hours of employment, not to exceed twelve hours per day, and only for activities solely within the scope of the employment;
- (2) Only the vehicle specified; and
- (3) Only if the permit is kept in the defendant's possession while operating the employer's vehicle.

[(e)] (g) Notwithstanding any other law to the contrary, any:

- (1) Conviction under this section, section 291E-4(a), or section 291E-61.5;
- (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or
- (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a), or section 291E-61.5;

shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo

contendere, or an adjudication, in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section. No license and privilege suspension or revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be suspended or revoked as provided in this section.

~~(d)~~ (h) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(i) Upon proof that the defendant has installed an ignition interlock device in the defendant's vehicle pursuant to subsection (b), the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the revocation period.

~~(e)~~ (j) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until the expiration of the period of revocation determined by the court. After the period of revocation is completed, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

~~(f)~~ (k) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test. Except as provided in section 291E-A, installation and maintenance of the ignition interlock device required by subsection (b) shall be at the defendant's own expense.

~~(g)~~ (l) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

~~(h)~~ (m) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2."

SECTION 9. Section 291E-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to this section or to part III or section 291E-61 or 291E-61.5, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

- (1) In violation of any restrictions placed on the person's license; ~~or~~
- (2) While the person's license or privilege to operate a vehicle remains suspended or revoked[-];
- (3) Without installing an ignition interlock device required by this chapter;  
or
- (4) After disabling or circumventing an ignition interlock device required by this chapter."

SECTION 10. Section 804-7.1, Hawaii Revised Statutes, is amended to read as follows:

**“§804-7.1 Conditions of release on bail, recognizance, or supervised release.** (a) Upon a showing that there exists a danger that the defendant will commit a serious crime or will seek to intimidate witnesses, or will otherwise unlawfully interfere with the orderly administration of justice, the judicial officer named in section 804-5 may deny the defendant’s release on bail, recognizance, or supervised release.

(b) Upon the defendant’s release on bail, recognizance, or supervised release, however, the court may enter an order:

- (1) Prohibiting the defendant from approaching or communicating with particular persons or classes of persons, except that no such order should be deemed to prohibit any lawful and ethical activity of defendant’s counsel;
- (2) Prohibiting the defendant from going to certain described geographical areas or premises;
- (3) Prohibiting the defendant from possessing any dangerous weapon, engaging in certain described activities, or indulging in intoxicating liquors [ ] certain drugs;
- (4) Requiring the defendant to report regularly to and remain under the supervision of an officer of the court;
- (5) Requiring the defendant to maintain employment, or, if unemployed, to actively seek employment, or attend an educational or vocational institution;
- (6) Requiring the defendant to comply with a specified curfew;
- (7) Requiring the defendant to seek and maintain mental health treatment or testing, including treatment for drug or alcohol dependency, or to remain in a specified institution for that purpose;
- (8) Requiring the defendant to remain in the jurisdiction of the judicial circuit in which the charges are pending unless approval is obtained from a court of competent jurisdiction to leave the jurisdiction of the court;
- (9) Requiring the defendant to satisfy any other condition reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person or community; or
- (10) Imposing any combination of conditions listed above.

The judicial officer may revoke a defendant’s bail upon proof that the defendant has breached any of the conditions imposed.

(c) In addition to the conditions in subsection (b) and except as provided in subsection (d), when the defendant is charged with an offense under section 291E-61, except an offense for which the defendant would be sentenced pursuant to section 291E-61(b)(1), the court shall order as a condition of release on bail, recognizance, or supervised release that, within fifteen days, the defendant install an ignition interlock device, as defined in section 291E-1, on any vehicle that the defendant will operate during the defendant’s release on bail, recognizance, or supervised release. Upon proof that the defendant has installed an ignition interlock device in the defendant’s vehicle, the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the period of the defendant’s release on bail, recognizance, or supervised release.

(d) Notwithstanding any other law to the contrary, the court shall not issue an ignition interlock permit to:

- (1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense; or

(2) A defendant who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b).

(e) The court may issue a separate permit authorizing a defendant to operate a vehicle owned by the defendant's employer while released on bail as provided in section 291E-61.

(f) Except as provided in section 291E-A, installation and maintenance of the ignition interlock device required by subsection (c) shall be at the defendant's own expense."

SECTION 11. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

**"§853-4 Chapter not applicable; when.** This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
  - (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
  - (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
  - (A) Escape in the first degree;
  - (B) Escape in the second degree;
  - (C) Promoting prison contraband in the first degree;
  - (D) Promoting prison contraband in the second degree;
  - (E) Bail jumping in the first degree;

- (F) Bail jumping in the second degree;
  - (G) Bribery;
  - (H) Bribery of a witness;
  - (I) Intimidating a witness;
  - (J) Bribery of or by a juror;
  - (K) Intimidating a juror;
  - (L) Jury tampering;
  - (M) Promoting prostitution in the first degree;
  - (N) Promoting prostitution in the second degree;
  - (O) Promoting prostitution in the third degree;
  - (P) Abuse of family or household members;
  - (Q) Sexual assault in the second degree;
  - (R) Sexual assault in the third degree;
  - (S) A violation of an order issued pursuant to chapter 586;
  - (T) Promoting child abuse in the second degree;
  - (U) Promoting child abuse in the third degree;
  - (V) Electronic enticement of a child in the first degree; [øf]
  - (W) Electronic enticement of a child in the second degree; or
  - (X) An offense under part IV, chapter 291E;
- (14) The defendant has been charged with:
- (A) Knowingly or intentionally falsifying any report required under chapter 11, subpart B of part XII, with the intent to circumvent the law or deceive the campaign spending commission; or
  - (B) Violating section 11-201 or 11-202; or
- (15) The defendant holds a commercial driver’s license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle.
- The court may adopt by rule other criteria in this area.”

SECTION 12. (a) There is established the Hawaii ignition interlock implementation task force. The task force shall be comprised of the following:

- (1) Two members of the senate, appointed by the president of the senate;
- (2) Two members of the house of representatives, appointed by the speaker of the house of representatives;
- (3) Two members appointed by the chief justice of the Hawaii supreme court; provided that one member shall be a district court judge and one shall be a representative of the administrative driver’s license revocation office;
- (4) The director of transportation;
- (5) The director of health;
- (6) The attorney general;
- (7) The state public defender;
- (8) The chiefs of police of the counties of Hawaii, Kauai, and Maui and the city and county of Honolulu;
- (9) The prosecuting attorneys of the counties of Hawaii, Kauai, and Maui and the city and county of Honolulu;
- (10) The examiners of drivers of the counties of Hawaii, Kauai, and Maui and the city and county of Honolulu;
- (11) The executive director and a member of the Council of Mothers Against Drunk Driving, Hawaii Chapter;
- (12) A representative, to be appointed by the governor, of an ignition interlock device vendor operating in at least one other state that sells and installs an ignition interlock device that meets or exceeds any applicable standards of the National Highway Traffic Safety Administration; and

- (13) A member of the Hawaii Association of Criminal Defense Lawyers, appointed by its president.
- (b) The members of the task force shall select the chairperson of the task force and shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties. Members of the task force may designate a representative for the purpose of attendance at task force meetings.
- (c) The task force shall:
- (1) Meet as necessary to plan for the implementation of this Act, including the preparation of reports and proposed legislation;
  - (2) Address the following issues:
    - (A) Whether an alternative to the ignition interlock device requirement of this Act should be offered to those offenders who drive a vehicle, such as a motorcycle, for which the device might not be available, or who claim not to have a car or not to wish to drive, including use of a secure continuous remote alcohol monitor, or whether a person should be required to pay the same fees as a person who has the device installed, as a means of reducing the incentive to drive a vehicle without an ignition interlock device;
    - (B) Whether additional or different criteria for determining indigency are appropriate;
    - (C) Whether drivers under the age of eighteen should be subject to the ignition interlock device requirement of this Act;
    - (D) Whether and how a new license with a photograph, instead of an ignition interlock permit issued by the court or the director of the administrative driver's license revocation office, should be issued and whether it should contain a statement, appearing similar to that required by section 286-109(a)(3), Hawaii Revised Statutes, that the person is permitted to drive only a vehicle equipped with an ignition interlock device;
    - (E) Whether provision should be made for an "emergency override" so that the driver can start and operate the vehicle with, for example, an alcohol concentration of .04 because of a medical emergency or a mechanical failure and, if so, how an override should be documented, including, for example, with a 911 telephone call or a police report;
    - (F) What agency is best suited to receive reports generated by the vendor from the ignition interlock device, to monitor use of the device by individual drivers, and what resources will be required to make that monitoring effective;
    - (G) How the data produced by an ignition interlock device, including information on drinking and driving patterns, can best be used to facilitate effective alcohol treatment for the person so that the person is less likely to resume drinking and driving once the ignition interlock device is removed;
    - (H) Whether drivers sentenced to probation should be assessed a probation fee to help fund additional personnel necessary to monitor the use of the ignition interlock device;
    - (I) Whether drivers should be allowed to terminate probation early if they have complied with all ignition interlock device requirements for a specified period of time, number of vehicle starts, or number of miles driven;
    - (J) What sanctions should be imposed for failing the ignition interlock device test, including, for example, revocation of probation



or extension of the probation period and the period of required ignition interlock device use;

- (K) What sanctions should be imposed for failing to install an ignition interlock device as a condition of bail, including, for example, surrender of motor vehicle license plates or revocation of and commitment without bail;
  - (L) Whether additional legislation or other action is necessary to ensure that the periods during, and conditions under, which use of an ignition interlock device is ordered pursuant to chapters 291E and 804, Hawaii Revised Statutes, are consistent with each other and with this Act;
  - (M) Whether the exemption from the financial responsibility requirement afforded by sections 291E-41 and 291E-61, Hawaii Revised Statutes, is still desirable or necessary;
  - (N) Under what circumstances, including the number of test failures and the relative elevation of blood concentrations, the driver should face revocation of probation and what sanctions are appropriate, including resentencing to an additional period of ignition interlock device use;
  - (O) Whether judicial supervision of ignition interlock device use, and of driving under the influence offenders generally, should take place in the context of a “DUI Court” modeled along the lines of drug court programs now in successful use;
  - (P) Whether the State should, through a request for proposals or similar approach, select a single vendor to provide uniform, statewide ignition interlock program services with fees set by the State or whether multiple vendors should be encouraged to enter and compete in the marketplace;
  - (Q) Whether use of an ignition interlock device and issuance of an ignition interlock permit or license should be made retroactive such that, when the ignition interlock device requirements of this Act take effect, persons whose licenses have been suspended or revoked, pursuant to chapter 291E, Hawaii Revised Statutes, prior to this Act’s effective date may apply to use the device and receive an ignition interlock permit or license;
  - (R) Whether conforming statutory amendments are necessary to make this Act and existing law consistent with each other; and
  - (S) Any other issues pertinent to the implementation of this Act;
- (3) Identify the resources necessary for the State to implement and maximize benefits from use of the ignition interlock device;
  - (4) Identify all sources of funding, including federal grants and legislative appropriations, available to implement use of the ignition interlock device; and
  - (5) Draft additional proposed legislation necessary to implement use of the ignition interlock device.
- (d) The department of transportation shall provide the administrative, technical, and clerical support services necessary to assist the task force in achieving its purpose as required under this Act.
- (e) The task force shall submit a report of its initial findings and recommendations for implementation of the use of the ignition interlock device, including any proposed legislation, no later than twenty days prior to the convening of the regular session of 2009.

(f) The task force shall submit a final plan for implementation of the use of the ignition interlock device, including any proposed legislation, no later than twenty days prior to the convening of the regular session of 2010.

(g) The Hawaii ignition interlock implementation task force shall cease to exist after June 30, 2010.

SECTION 13. There is appropriated out of the driver education and training special fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2008-2009 to be deposited into the state highway fund for the purpose of supporting the work of the ignition interlock implementation task force.

SECTION 14. There is appropriated out of the state highway fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2008-2009 for the purpose of supporting the work of the ignition interlock implementation task force.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

## PART II.

SECTION 15. Section 287-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever a driver’s license has been suspended or revoked:

(1) Pursuant to section 291E-65 or part III of chapter 291E, except as provided in section 291E-41(f);

(2) Upon a conviction of any offense pursuant to law; or

(3) In the case of minors, pursuant to part V of chapter 571,

the license shall not at any time thereafter be issued to the person whose license has been suspended or revoked, nor shall the person thereafter operate a motor vehicle, unless and until the person has furnished and thereafter maintains proof of financial responsibility; provided that this section shall not apply to a license suspended pursuant to section 291E-61(b)(1) or (b)(2) or section 291E-64(b)(1), any conviction of a moving violation, any administrative license suspension pursuant to chapter 291A, or the first conviction within a five-year period for driving without a valid motor vehicle insurance policy.

This subsection shall not apply to a suspension or revocation of a provisional license under section 286-102.6(d).”

SECTION 16. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1) [-] or (b)(2).”

## PART III.

SECTION 17. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 18. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

## ACT 172

SECTION 20. This Act shall take effect on July 1, 2008; provided that sections 2 through 11 shall take effect on July 1, 2010; provided further that sections 15 and 16 shall be repealed on June 30, 2010.

(Approved June 13, 2008.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 172

S.B. NO. 2083

A Bill for an Act Relating to the Supervision of Adult Offenders.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 353B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§353B- Interstate transfer fee.** The judiciary may assess a fee not to exceed \$200 for each application made by a parolee or probationer for a transfer out of the State; provided that the fees collected shall be deposited into the State’s general fund.”

SECTION 2. Section 353B-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the state council for interstate adult offender supervision, which shall be placed administratively in the judiciary. The council shall be composed of [~~five~~] nine members to be appointed as follows:

- (1) One member of the house of representatives appointed by the speaker of the house of representatives;
- (2) One member of the senate appointed by the senate president;
- (3) One member of the judiciary appointed by the chief justice of the supreme court;
- (4) The director of public safety, or the director’s designee;
- (5) One member from the general public representing victims groups appointed by the governor; [~~and~~]
- (6) The prosecuting attorney of the city and county of Honolulu, or the prosecuting attorney’s designee;<sup>1</sup>
- (7) The attorney general, or the attorney general’s designee;
- (8) The state public defender, or the state public defender’s designee; and
- [~~(6)~~] (9) The compact administrator, appointed by the governor, with the advice and consent of the senate and the chief justice.

With the exception of the director of public safety[;] or the director’s designee, and the compact administrator, the terms of all members shall be for four years; provided that the victims group representative and the compact administrator shall be subject to confirmation proceedings under section 26-34. No person, except the compact administrator, shall be appointed consecutively to more than two terms.

There shall be one full-time coordinator position for the supervision of adult offenders. The coordinator shall be appointed by the judiciary.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 4. This Act shall take effect on July 1, 2008.  
(Approved June 13, 2008.)

Notes

1. Semicolon should be underscored.
2. Edited pursuant to HRS §23G-16.5.

ACT 173

S.B. NO. 2146

A Bill for an Act Relating to the Center for Nursing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 304A-1404, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The dean of the school of nursing and dental hygiene, or the dean’s designee, shall direct the activities of the center for nursing. There shall be an advisory board composed of fifteen members appointed by the governor pursuant to section 26-34 to staggered terms as follows:

- (1) Five members from the business and labor community:
  - (A) One of whom shall represent the Healthcare Association of Hawaii;
  - (B) Two of whom shall represent other business entities; and
  - (C) Two of whom shall represent labor organizations;
- (2) Five members from the nursing profession:
  - (A) One of whom shall represent the American Organization of Nurse Executives;
  - (B) One of whom shall represent the Hawaii Government Employees Association; and
  - (C) Three of whom shall represent the Hawaii Nurses’ Association, ~~[professional component;]~~ provided that:
    - (i) Two members shall represent the professional component; and
    - (ii) One member shall be a non-managerial staff nurse.
- (3) Two members from among the State’s nurse educators:
  - (A) One of whom shall be a doctorally-prepared nurse educator; and
  - (B) The other, a doctorally-prepared nurse researcher; and
- (4) Three members from community agencies or consumer groups with an interest in healthcare.”

SECTION 2. Act 198, Session Laws of Hawaii 2003, is amended by amending section 10 to read as follows:

“SECTION 10. This Act shall take effect on July 1, 2003; provided that the amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted pursuant to Act 142, Session Laws of Hawaii 1998; and provided further that sections 3 and 6 shall be repealed on July 1, ~~[2009.]~~ 2014.”

SECTION 3. The advisory board of the Hawaii center for nursing, established pursuant to section 304A-1404, Hawaii Revised Statutes, shall submit to the legislature no later than twenty days prior to the convening of the regular session of 2009:

- (1) An interim report on the progress and findings of the five-year longitudinal study currently being conducted by the center regarding new graduate registered nurses turnover and best practices in retention of nurses; and
- (2) A report on funding alternatives that will enable the center to continue its operations and services.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2008.

(Approved June 13, 2008.)

**ACT 174**

S.B. NO. 3171

A Bill for an Act Relating to Charitable Trusts and Nonprofit Organizations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Hawaii has more than 5,000 charities and nonprofit organizations that employ 41,000 individuals who provide needed services to Hawaii residents. Hawaii charities have revenues over \$2,000,000,000 and pay over \$1,000,000,000 in wages. According to a study conducted in 2002, local residents made \$430,000,000 worth of cash and in-kind donations in one year to Hawaii and national charities.

However, Hawaii is one of only 11 states that do not require charities to register with a state agency. Nonprofit experts have noted that Hawaii's oversight of charities is one of the weakest in the nation. According to a 2004 survey, Hawaii was ranked last in the number of state positions budgeted for charity oversight and enforcement. New York had 55 budgeted positions, Pennsylvania had 30 positions, and Oregon had nearly 20 positions. Hawaii has a single deputy attorney general who serves on a part-time basis to oversee charities in the state.

Due to the absence of a registration system, the department of the attorney general may only pursue an investigation if an individual complains or questionable conduct is revealed and disclosed to the public. Recent news articles reported a pre-school with an enrollment of three hundred students had \$2,000,000 in annual revenues, paid a top executive \$250,000 annually, made an illegal \$100,000 loan to another officer whose spouse is another executive, and paid \$1,200 per month for two leased luxury cars for its husband and wife management team. New reports have revealed other instances of improper and illegal conduct by charities and leaders.

The legislature finds that a registration system is needed for charities. A registration system will provide the State with valuable information on which nonprofit groups are raising funds, what programs these groups seek to fund, and how these groups are spending collected funds. Registration can help enforcement officials spot red flags, such as questionable transactions or compensation deals, and answer questions from the public. The review of annual filings may also serve as a deterrent to abuse. Before making a contribution, donors could find out if an organization is a legitimate charity and determine if the group has provided the State with information on its finances.

The purpose of this Act is to:

- (1) Require charitable trusts and nonprofits to register and file annual financial reports with the attorney general;

- (2) Provide standards for registration of professional fund raising counsel and professional solicitors, and registration of charitable trusts and nonprofits;
- (3) Authorize the attorney general to conduct investigation on possible violations;
- (4) Prohibit contracting with unregistered solicitors;
- (5) Require submittal of a filing fee based on total revenue of organization; and
- (6) Appropriate funds to staff additional positions.

SECTION 2. Chapter 467B, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§467B-A Registration of charitable organizations.** (a) Every public benefit corporation domiciled in Hawaii and every charitable organization not exempted by section 467B-C shall register with the department prior to conducting any solicitation or prior to having any solicitation conducted on its behalf by others. Two authorized officers of the charitable organization shall sign the registration form and shall certify that the statements therein are true and correct to the best of their knowledge subject to penalties imposed by section 710-1063. A consolidated application for registration may, at the option of the charitable organization, be submitted by a parent organization for itself and any or all of its related foundations, supporting organizations, chapters, branches, or affiliates in this state.

(b) The attorney general may make available a registration form to assist in the registration by charitable organizations that must register in other states and shall designate the uniform registration statement developed by the National Association of State Charity Officials be used as the registration form under this section.

(c) The attorney general may require that registration forms be filed with the department electronically and may require the use of electronic signatures.

**§467B-B Annual financial reports; fiscal records and fees.** (a) Every charitable organization required to register pursuant to section 467B-A shall annually file with the department a report for its most recently completed fiscal year. The report shall include a financial statement and other information as the department may require. The charitable organization shall file the report not more than eight months following the close of its fiscal year on or before the date the organization files a Form 990 or 990EZ with the Internal Revenue Service. The report shall be accompanied by a filing fee as prescribed by subsection (d) and shall be signed by two authorized officers of the organization, one of whom shall be the chief fiscal officer of the organization. These officers shall certify that the report is true and correct to the best of their knowledge. The department shall prescribe the form of the report and shall prescribe standards for its completion. The department shall accept, under such conditions as the attorney general may prescribe, a copy or duplicate original of financial statements, reports, or returns filed by the charitable organization with the Internal Revenue Service or another state having requirements similar to the provisions of this section; provided that the attorney general may prescribe the form of the annual financial report for charitable organizations that file the Form 990N with the Internal Revenue Service.

(b) A charitable organization with gross revenue in excess of \$500,000 in the year covered by the report shall include with its annual financial report, an audit report prepared by a certified public accountant; provided that any charitable organization shall include with its annual financial report an audit report prepared by a certified public accountant as a result of a requirement imposed by a governmental authority or a third party. For purpose of this subsection, “gross revenue” does not

include grants or fees from government agencies or revenue derived from funds held in trust for the benefit of the organization.

(c) The department, upon written request and for good cause shown, may grant an extension of time, not to exceed three months, for the filing of the report.

(d) Each charitable organization filing a report required by this section shall pay a filing fee to the department, based on the total amount of its income and receipts during the time covered by the report at the close of the calendar or fiscal year adopted by the charitable organization as follows:

- (1) \$10, if less than \$25,000;
- (2) \$25, if \$25,000 but less than \$50,000;
- (3) \$50, if \$50,000 but less than \$100,000;
- (4) \$100, if \$100,000 but less than \$250,000;
- (5) \$150, if \$250,000 but less than \$500,000;
- (6) \$200, if \$500,000 but less than \$1,000,000;
- (7) \$300, if \$1,000,000 but less than \$2,000,000;
- (8) \$500, if \$2,000,000 but less than \$5,000,000; or
- (9) \$750, if \$5,000,000 or more.

(e) If a return or report required under this section is not filed, taking into account any extension of time for filing, unless it is shown that the failure is due to reasonable cause, a fine of \$20 shall be imposed for each day during which the violation continues; provided that the total amount imposed under this subsection shall not exceed \$1,000. Returns and reports submitted without the proper filing fee shall not be accepted for filing.

(f) Every charitable organization subject to sections 467B-A and 467B-B shall keep true fiscal records that shall be available to the department for inspection upon request. The organization shall retain the records for no less than three years after the end of the fiscal year to which they relate.

**§467B-C Charitable organizations exempted from registration and financial disclosure requirements.** The following charitable organizations shall not be subject to sections 467B-A and 467B-B, if each organization submits information as the department may require to substantiate an exemption under this section:

- (1) Any duly organized religious corporation, institution, or society;
- (2) Any parent-teacher association or educational institution, the curricula of which in whole or in part are registered or approved by any state or the United States either directly or by acceptance of accreditation by an accrediting body;
- (3) Any nonprofit hospital licensed by the State or any similar provision of the laws of any other state;
- (4) Any governmental unit or instrumentality of any state or the United States;
- (5) Any person who solicits solely for the benefit of organizations described in paragraphs (1) to (4); and
- (6) Any charitable organization that normally receives less than \$25,000 in contributions annually, if the organization does not compensate any person primarily to conduct solicitations.

**§467B-D Investigations; subpoenas; court orders.** (a) The department, on its own motion or on complaint of any person, may conduct an investigation to determine whether any person has violated or is about to violate any provision of sections 467B-A, 467B-B, and 467B-9.

(b) The attorney general or the attorney general's authorized representative may subpoena documentary material relating to any matter under investigation, issue subpoenas to any person involved in or who may have knowledge of any matter

under investigation, administer an oath or affirmation to any person, and conduct hearings on any matter under investigation.

(c) If any person fails to obey any subpoena issued by the department pursuant to this section, the department, after notice, may apply to the circuit court for the first circuit, State of Hawaii, for a hearing on the application, and after the hearing, the court may issue an order requiring the person to obey the subpoena or any part thereof, together with any other relief as may be appropriate. Any disobedience of any order entered under this section by any court shall be punished as a contempt thereof."

SECTION 3. Section 467B-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"Gross revenue" means income of any kind from all sources, including all amounts received as the result of any solicitation by a professional solicitor.

"Person" means an individual, corporation, limited liability company, association, partnership, trust, foundation, and any other entity, however styled."

2. By amending the definition of "parent organization" to read:

"Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fund raising, and expenditures, or assists or advises one or more related foundations, supporting organizations, chapters, branches, or affiliates of such organization in [the State.] this state."

3. By repealing the definition of "person".

~~["Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any combination thereof."]~~

SECTION 4. Section 467B-2.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within ninety days after a solicitation campaign or event has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional solicitor shall file with the attorney general a financial report for the campaign, including gross revenue and an itemization of all expenses incurred[-] on a form prescribed by the attorney general. This report shall be signed under penalty provided by section 710-1063 by the authorized contracting agent for the professional solicitor and two authorized officials of the charitable organization[-] and shall report gross revenue from Hawaii donors and national gross revenue from a solicitation activity or campaign. A professional solicitor shall maintain during each solicitation campaign and for not less than three years after the completion of that campaign the following records, which shall be available for inspection upon demand by the attorney general:

- (1) The date and amount of each contribution received and the name and address of each contributor;
- (2) The name and residence of each employee, agent, or other person involved in the solicitation;
- (3) Records of all revenue received and expenses incurred in the course of the solicitation campaign; and
- (4) The location and account number of each bank or other financial institution account in which the professional solicitor has deposited revenue from the solicitation campaign."

SECTION 5. Section 467B-5.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Prior to the commencement of any charitable sales promotion in this [State] state conducted by a commercial co-venturer using the name of a charitable



organization, the commercial co-venturer shall obtain the written consent of the charitable organization whose name will be used during the charitable sales promotion. The commercial co-venturer shall file a copy of the written consent with the department not less than ten days prior to the commencement of the charitable sales promotion within this state. An authorized representative of the charitable organization and the commercial co-venturer shall sign the written consent, and the terms of the written consent shall include the following:

- (1) The goods or services to be offered to the public;
- (2) The geographic area where, and the starting and final date when, the offering is to be made;
- (3) The manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or per cent per unit of goods or services purchased or used that is to benefit the charitable organization;
- (4) A provision for a final accounting on a per unit basis to be given by the commercial co-venturer to the charitable organization and the date when it is to be made; and
- (5) The date when and the manner in which the benefit is to be conferred on the charitable organization.”

SECTION 6. Section 467B-8, Hawaii Revised Statutes, is amended to read as follows:

**“§467B-8 Information filed to become public records.** Statements, reports, professional fundraising counsel contracts or professional solicitor contracts, and all other documents and information required to be filed under this chapter or by the attorney general shall become government records in the department and be open to the general public for inspection [~~at such times and under such conditions as the attorney general may prescribe.~~] pursuant to chapter 92F; provided that information in any registration statement concerning the residential addresses of any officer or director or that identifies a charitable organization’s financial or banking accounts shall be confidential under chapter 92F.”

SECTION 7. Section 467B-9, Hawaii Revised Statutes, is amended to read as follows:

**“§467B-9 Prohibited acts.** (a) No person, for the purpose of soliciting contributions from persons in the [State,] state, shall use the name of any other person except that of an officer, director, or trustee of the charitable organization by or for which contributions are solicited, without the written consent of the other persons.

A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if the latter person’s name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or the latter person’s name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

(b) No charitable organization, professional solicitor, or professional fundraising counsel soliciting contributions shall use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

(c) No person, in connection with any solicitation or sale, shall misrepresent or mislead anyone by any manner, means, practice, or device whatsoever, to believe that the solicitation or sale is being conducted on behalf of a charitable organization

or that the proceeds of the solicitation or sale will be used for charitable purposes, if that is not the fact.

(d) No professional solicitor, and no agent, employee, independent contractor, or other person acting on behalf of the professional solicitor, shall solicit in the name of or on behalf of any charitable organization unless:

(1) The professional solicitor has obtained the written authorization of two officers of the organization, which authorization shall bear the signature of the professional solicitor and the officers of the charitable organization and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date of issuance, and has filed a copy of the written authorization with the attorney general prior to the solicitation; and

(2) The professional solicitor and any person who, for compensation, acts as an agent, employee, independent contractor, or otherwise on behalf of the professional solicitor carries a copy of the authorization while conducting solicitations, and exhibits it on request to persons solicited or police officers or agents of the department.

(e) No charitable organization, professional fundraising counsel, or professional solicitor subject to this chapter shall use or exploit the fact of filing any statement, report, professional fundraising counsel contracts, or professional solicitor contracts or other documents or information required to be filed under this chapter or with the department so as to lead the public to believe that the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the charitable organization, professional fundraising counsel, or professional solicitor; provided that the use of the following statement shall not be deemed a prohibited exploitation: "Information regarding this organization has been filed with the State of Hawaii department of the attorney general. Filing does not imply endorsement or approval of the organization or the public solicitation for contributions."

(f) No person, while soliciting, shall impede or obstruct, with the intent to physically inconvenience the general public or any member thereof in any public place or in any place open to the public.

(g) No person shall submit for filing on behalf of any charitable organization, professional fundraising counsel, or professional solicitor, any statement, financial statement, report, attachment, or other information to be filed with the department that contains information, statements, or omissions that are false or misleading.

(h) No person shall solicit contributions from persons in the [State] state or otherwise operate in the [State] state as a charitable organization, an exempt charitable organization, professional fundraising counsel, professional solicitor, or commercial co-venturer unless the person has filed the information required by this chapter with the department in a timely manner.

(i) No person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in the [State] state unless the person soliciting contributions has complied with the requirements of this chapter.

(j) No person shall fail to file the information and registration statement, annual or financial reports, and other statements required by this chapter or fail to provide any information demanded by the attorney general pursuant to this chapter in a timely manner.

(k) No person shall employ in any solicitation or collection of contributions for a charitable organization, any device, scheme, or artifice to defraud or obtain money or property by means of any false, deceptive, or misleading pretense, representation, or promise.

(l) No person, in the course of any solicitation, shall represent that funds collected will be used for a particular charitable purpose, or particular charitable purposes, if the funds solicited are not used for the represented purposes.

(m) No person shall receive compensation from a charitable organization for obtaining moneys or bequests for that charitable organization if that person has also received compensation for advising the donor to make the donation; provided that compensation may be received if the person obtains the written consent of the donor to receive compensation from the charitable organization.

(n) No person shall act as a professional solicitor if the person, any officer, any person with a controlling interest therein, or any person the professional solicitor employs, engages, or procures to solicit for compensation, has been convicted by any federal or state court of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a solicitation for a charitable organization or purpose.

(o) No charitable organization shall use the services of an unregistered professional solicitor or professional fundraising counsel."

SECTION 8. Section 467B-9.7, Hawaii Revised Statutes, is amended to read as follows:

**"§467B-9.7 Administrative enforcement and penalties.** (a) The attorney general may refuse to register~~[- may revoke, or may suspend]~~ or may revoke or suspend the registration of any charitable organization, professional fundraising counsel, or professional solicitor whenever the attorney general finds that a charitable organization, professional fundraising counsel, or professional solicitor, or an agent, servant, or employee thereof:

- (1) Has violated or is operating in violation of this chapter, the rules of the attorney general, or an order issued by the attorney general;
- (2) Has refused or failed, after notice, to produce any records of the organization or to disclose any information required to be disclosed under this chapter or the rules of the attorney general;
- (3) Has made a material false statement in an application, statement, or report required to be filed under this chapter; or
- (4) Has failed to file the financial report required by section 467B-2.5, or filed an incomplete financial report.

(b) When the attorney general finds that the registration of any person may be refused, suspended, or revoked under the terms of subsection (a), the attorney general may:

- (1) Revoke a grant of exemption from any provisions of this chapter;
- (2) Issue an order directing that the person cease ~~[and desist]~~ specified fundraising activities;
- (3) Impose an administrative fine not to exceed \$1,000 for each act or omission that constitutes a violation of this chapter and an additional penalty, not to exceed \$100, for each day during which the violation continues. Registration shall be automatically suspended upon final affirmation of an administrative fine until the fine is paid or until the normal expiration date of the registration. No registration shall be renewed until the fine is paid; or
- (4) Place the registrant on probation for ~~[such]~~ any period of time and subject to ~~[such]~~ any conditions as the attorney general may determine.

(c) Any person aggrieved by an action of the attorney general under this section may request a hearing to review that action in accordance with chapter 91 and rules adopted by the attorney general. Any request for hearing shall be made within ten days after the attorney general has served the person with notice of the action, which notice shall be deemed effective upon mailing.

(d) The attorney general may apply to the circuit court for the first circuit, State of Hawaii, for relief, and the court may issue a temporary injunction or a permanent injunction to restrain violations of this chapter, appoint a receiver, order restitution or an accounting, or grant other relief as may be appropriate to ensure the due application of charitable funds. Proceedings thereon shall be brought in the name of the State.”

SECTION 9. Section 467B-12, Hawaii Revised Statutes, is amended to read as follows:

**“§467B-12 Filing requirements for professional fundraising counsel and professional solicitors.** (a) Every professional fundraising counsel or professional solicitor, prior to any solicitation, shall register with the department. The registration statement [~~shall be in the form prescribed by the attorney general and~~] shall contain the information [~~as the attorney general may require.~~] set forth in subsection (e). The registration statement shall be accompanied by a fee in the amount of \$250, or in the amount and with any additional sums as may be prescribed by the attorney general. [~~The statement shall list the names and addresses of all owners, officers, and directors of a professional fundraising counsel, and the names and addresses of all owners, officers, and directors of a professional solicitor.~~] Renewal registration statements shall be filed with the department on or before July 1 of each calendar year by each professional fundraising counsel or professional solicitor [~~and shall be effective until June 30 of the next calendar year~~]. The renewal statement shall [~~be in a form prescribed by the attorney general.~~] contain the information set forth in subsection (e). A renewal fee of \$250, or in any amount and with any additional sums as may be prescribed by the attorney general, shall accompany the renewal statement.

(b) [~~The professional fundraising counsel or~~] Each professional solicitor, at the time of each filing, shall file with and have approved by the attorney general a bond in which the applicant is the principal obligor in the penal sum of \$25,000 issued with good and sufficient surety or sureties approved by the attorney general and which shall remain in effect for one year. The bond shall inure to the benefit of the State, conditioned that the applicant, its officers, directors, employees, agents, servants, and independent contractors shall not violate this chapter. A partnership or corporation that is a [~~professional fundraising counsel or~~] professional solicitor may file a consolidated bond on behalf of all its members, officers, and employees.

(c) The attorney general shall examine each registration statement and supporting document filed by a professional fundraising counsel or professional solicitor and shall determine whether the registration requirements are satisfied. If the attorney general determines that the registration requirements are not satisfied, the attorney general shall notify the professional fundraising counsel or professional solicitor in writing within fifteen business days of its receipt of the registration statement; otherwise the registration statement is deemed to be approved. Within seven business days after receipt of a notification that the registration requirements are not satisfied, the professional fundraising counsel or professional solicitor may request a hearing.

(d) The attorney general may [~~adopt rules to provide for:~~

(1) ~~The extension of filing deadlines;~~

(2) ~~The online availability of forms required to be filed;~~

(3) ~~The electronic filing of required registration statements, contracts, forms, and reports; and~~

(4) ~~The acceptance of electronic signatures.]~~

require that registration and renewal registration, surety bonds, and contracts be filed with the department electronically and may require the use of electronic signatures.

(e) Each registration and renewal registration shall contain:

- (1) The names and addresses of all owners, officers, and directors of a professional fundraising counsel, and the names and addresses of all owners, officers, and directors of a professional solicitor;
- (2) A statement concerning the corporate form of the registrant, whether corporation, limited liability corporation, partnership, or individual;
- (3) A statement whether the registrant has an office in Hawaii and the name and phone number of the person in charge of the office;
- (4) The names and addresses of any individuals supervising any solicitation activity;
- (5) A statement whether the registration has entered into a consent agreement with, or been disciplined by or subject to administrative action by, another governmental agency;
- (6) A statement whether any officer, director, or any person with a controlling interest in the registrant has ever been convicted of a felony or a misdemeanor involving dishonesty in the solicitation for a charitable purpose;
- (7) The date that the registrant began soliciting Hawaii residents on behalf of a charitable organization or providing professional fundraising counsel services; and
- (8) Whether any owners, directors, or officers are related to:
  - (A) Any other officers, directors, owners, or employees of the registrant;
  - (B) Any officer, director, trustee, or employee of a charitable organization under contract with the registrant; and
  - (C) Any vendor or supplier providing goods or services to a charitable organization under contract with the registrant.”

SECTION 10. There is appropriated out of the solicitation of funds for charitable purposes special fund the sum of \$238,725 or so much thereof as may be necessary for fiscal year 2008-2009 for two permanent full-time equivalent (2.00 FTE) deputy attorney general positions, one permanent full-time equivalent (1.00 FTE) auditor position, and one permanent full-time equivalent (1.00 FTE) legal assistant position.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 11. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 13. This Act shall take effect on January 1, 2009; provided that:

- (1) Sections 5 through 9 of this Act shall take effect on July 1, 2008; and
- (2) Any charitable organization required to register under this Act shall file the annual financial report with the attorney general as provided in section 467B-B(a), Hawaii Revised Statutes, no later than eight months following the close of its 2008 taxable year, together with the fees prescribed by section 467B-B(d), Hawaii Revised Statutes.

(Approved June 13, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Fraud Prevention.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that every notary public must keep an engraved seal of office or a rubber stamp facsimile seal that clearly shows, when embossed, stamped, or impressed upon a document, the notary's name and the words, "notary public" and "State of Hawaii." The notary public must authenticate all the notary's official acts, attestations, certificates, and instruments and always add to an official signature the typed or printed name of the notary and a statement showing the date that the notary's commission expires.

The legislature also finds that each time a notary public notarizes a document, the notary public must record the type, date, and time of day of the notarial act, the title or type and date of the document or proceeding, the signature, printed name, and address of each person whose signature is notarized and of each witness, other parties to the instrument, and the manner in which the signer was identified. All copies or certificates granted by the notary must be under the notary's hand and notarial seal and shall be received as evidence of such transactions.

The legislature further finds that, notwithstanding the requirements that attend notarization of documents, there is an alarming increase in the alteration of notarized documents for the purpose of identity theft and fraud. For example, a Hawaii man with a federal criminal record involving bank fraud, bogus names, and false checks was recently convicted of identity theft and other offenses arising from the use of a notarized document, relating to the sale of an automobile, to transfer land and property.

The purpose of this Act is to deter the commission of crimes against people and property by the use of fraudulent notarized documents by comprehensively strengthening the notary public laws relating to the authentication of certified statements.

SECTION 2. Chapter 456, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**§456-A Definitions.** As used in this chapter, unless the context requires otherwise:

"Alter" means to change by means of erasure, obliteration, deletion, insertion of new content, or transposition of content.

"Personally knowing" means having an acquaintance, derived from association with the individual, which establishes the individual's identity with at least a reasonable certainty.

"Proof of the signer's signature and identity" means proof evidenced by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature.

**§456-B Powers and duties of the attorney general.** In addition to any other powers and duties authorized by law, the attorney general shall have all powers necessary or convenient to effectuate the purposes of this chapter, including, without limitation, the following powers:

- (1) Issue notary public commissions to applicants pursuant to this chapter;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91;
- (3) Suspend or revoke any commission for any cause prescribed by this chapter or for any violation of the rules adopted pursuant to this chapter,

and refuse to issue any commission for any cause that would be grounds for suspension or revocation of a commission; and

- (4) Impose administrative fines for any cause prescribed by this chapter or for any violation of the rules adopted pursuant to this chapter.

**§456-C Failure to verify identity and signature.** (a) A person commits the offense of failure to verify identity and signature if the person is a commissioned notary public and knowingly notarizes a document and:

- (1) If a witness to the signing of the instrument, fails to verify the identity of the signer by personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer's identity; or
- (2) If not a witness to the signing of the instrument, fails to verify the identity of the signer by personally knowing the signer or by comparing the personal appearance of the signer with satisfactory proof of the signer's identity; or fails to verify the signature of the signer by recognizing the signature of the signer by personal familiarity with the signature, or by comparing the signature with satisfactory proof of the signer's signature.

(b) Any person who violates this section shall be guilty of a misdemeanor and shall be sentenced in accordance with chapter 706.

(c) A conviction under this section shall result in the automatic revocation of the notary public's commission.

**§456-D Failure to authenticate with a certification statement.** (a) A person commits the offense of failure to authenticate with a certification statement if the person is a commissioned notary public and knowingly notarizes a document and fails to include any of the following in the notary certification:

- (1) Date of notarization and signature of the notary public;
- (2) The printed name and stamp or seal of the notary public;
- (3) Identification of the jurisdiction in which the notarial act is performed;
- (4) Identification or description of the document being notarized, placed in close proximity to the acknowledgment or jurat; and
- (5) A statement of the number of pages and date of the document.

(b) Any person who violates this section shall be guilty of a misdemeanor and shall be sentenced in accordance with chapter 706.

(c) A conviction under this section shall result in the automatic revocation of the notary public's commission."

SECTION 3. Chapter 710, Hawaii Revised Statutes, is amended by adding to part V two new sections to be appropriately designated and to read as follows:

**“§710-A Misrepresenting a notarized document in the first degree. (1)**

A person commits the offense of misrepresenting a notarized document in the first degree if the person submits or invites reliance on a document that the person knows has been altered after the document had been notarized by a notary public in this or any other jurisdiction, and:

- (a) The offense was committed with intent to mislead a public servant; or
- (b) The offense was committed for purpose of commercial or private financial gain.
- (2) Misrepresenting a notarized document in the first degree is a class C

felony.

**§710-B Misrepresenting a notarized document in the second degree.** (1)

A person commits the offense of misrepresenting a notarized document in the second degree if, with intent to mislead another, the person submits or invites reliance on a document that the person knows has been altered after the document had been notarized by a notary public in this or any other jurisdiction.

(2) Misrepresenting a notarized document in the second degree is a misdemeanor.”

SECTION 4. Section 456-7, Hawaii Revised Statutes, is amended to read as follows:

~~“§456-7 [Acts prohibited; penalty. No person shall be qualified to act as a notary public or shall enter upon any of the duties of the office or offer or assume to perform any such duties until the person has fully complied with each of the requirements in each of the foregoing sections of this chapter. Any person wilfully violating this section shall be fined not more than \$500, or imprisoned not more than one year, or both.]~~ **Unauthorized practice as a notary public.** (a) A person commits the offense of unauthorized practice as a notary public if the person knowingly engages in or offers to engage in any duties of the office of a notary public without first complying with all of the following:

(1) Being appointed and commissioned as a notary public by the attorney general;

(2) Filing a copy of the person’s commission, an impression of the person’s seal, and a specimen of the person’s official signature with the clerk of the circuit court of the circuit in which the person resides; and

(3) Executing an official surety bond pursuant to section 456-5.

(b) Any person who violates this section shall be guilty of a misdemeanor and shall be sentenced in accordance with chapter 706.

(c) Nothing in this section shall be construed to restrict or to do away with any liability for civil damages.”

SECTION 5. Section 456-8, Hawaii Revised Statutes, is amended to read as follows:

**“§456-8 Rules.** The attorney general, subject to chapter 91, may prescribe such rules as the attorney general deems advisable concerning the administration of this chapter, the appointment and duties of notaries public, ~~[and] the duties of other officers thereunder[-], and such measures as may be necessary to prevent the fraudulent use of a notarized document after placement of the notary’s seal.~~ The rules shall have the force and effect of law.”

SECTION 6. Section 456-9, Hawaii Revised Statutes, is amended to read as follows:

**“§456-9 Fees[-] and administrative fines.** (a) The attorney general shall charge and collect the following fees for:

(1) Issuing the original commission, \$40; and

(2) Renewing the commission, \$40.

Notwithstanding the foregoing, the attorney general may establish and adjust fees pursuant to chapter 91.

~~[The foregoing fees collected by the attorney general shall be deposited into the notaries public revolving fund established by section 456-9.5, except that if that fund is terminated, the foregoing fees shall thereafter be deposited with the director of finance to the credit of the general fund.]~~



(b) The court fees for filing a copy of a commission and for each certificate of authentication shall be specified by the supreme court.

(c) The attorney general may impose and collect the following administrative fines for a notary public's failure to:

- (1) Maintain an official seal of one type, either a single engraved seal or a single rubber stamp facsimile seal, on which shall be inscribed the name of the notary public, and the words "notary public" and "State of Hawaii" only, \$20;
- (2) Surrender the notary public's seal and certificate to the attorney general within ninety days of resignation, removal from office, or the expiration of a term without renewal, \$200;
- (3) Authenticate every acknowledgment or jurat with a certificate that shall be signed and dated by the notary, include the printed name and official stamp or seal of the notary, identify the jurisdiction in which the notarial act is performed, describe in close proximity to the acknowledgment or jurat the document being notarized, and state the number of pages and date of the document, \$500;
- (4) Record all of the notary public's transactions as prescribed by section 456-15 and applicable rules, \$200;
- (5) Surrender the notary public's record books to the attorney general within ninety days of the end date of the commission, resignation, or removal from office, \$500; and
- (6) Notify the attorney general within ten days after loss, misplacement, or theft of the notary public's seal, stamp, or any record book, inform the appropriate law enforcement agency in the case of theft, and deliver a copy of the law enforcement agency's report of the theft to the attorney general, \$20.

(d) The foregoing moneys collected by the attorney general pursuant to this section shall be deposited into the notaries public revolving fund established by section 456-9.5, except that if that fund is terminated, the foregoing moneys shall thereafter be deposited with the director of finance to the credit of the general fund."

SECTION 7. Section 456-9.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established in the state treasury the notaries public revolving fund into which shall be deposited:

- (1) All fees, administrative fines, charges, or other payments received pursuant to section 456-9;
- (2) Penalties and fines for violations of section 456-3, 456-7, or 456-16;
- (3) Appropriations made for deposit into the notaries public revolving fund; and
- (4) Interest earned on money in the notaries public revolving fund."

SECTION 8. Section 456-15, Hawaii Revised Statutes, is amended to read as follows:

"**§456-15 Record; copies as evidence.** Every notary public shall record at length in a book of records all acts, protests, depositions, and other things, by the notary noted or done in the notary's official capacity. For each official act, the notary shall enter in the book:

- (1) The type, date, and time of day of the notarial act;
- (2) The title or type and date of the document or proceeding[;] and the nature of the act, transaction, or thing to which the document relates;

- (3) The signature, printed name, and address of each person whose signature is notarized and of each witness;
- (4) Other parties to the instrument; and
- (5) The manner in which the signer was identified.

All copies or certificates granted by the notary shall be under the notary’s hand and notarial seal[;] and shall be received as evidence of such transactions.”

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect on January 1, 2009.

(Approved June 13, 2008.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.

**ACT 176**

H.B. NO. 2772

A Bill for an Act Relating to Human Trafficking.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 260, Session Laws of Hawaii 2006, is amended as follows:

1. By amending subsection (a) of section 2 to read:

“(a) There is established the Hawaii anti-trafficking task force. The anti-trafficking task force shall be comprised of the following:

(1) Individuals:

- ~~[(1)]~~ (A) The attorney general, or the attorney general’s ~~[designees;]~~ designee;
- ~~[(2)]~~ (B) The directors of health, human services, and labor[;] and industrial relations, or their designees;
- (C) The state public defender, or the state public defender’s designee;
- ~~[(3)]~~ (D) The chief of police of each county, or the chief’s designee;
- ~~[(4)]~~ (E) The prosecuting attorney of each county, or the prosecutor’s designee;
- ~~[(5)]~~ (F) The director of the victim and witness assistance program of the department of the prosecuting attorney, city and county of Honolulu;
- (G) Hawaii contractees for services under the office of refugee resettlement of the United States Department of Health and Human Services; and
- (H) Hawaii contractees for services under the United States Conference of Catholic Bishops; and

- (2) Representatives of:
  - (A) The immigration information office of the county of Hawaii;
  - (B) The crime victim compensation commission;
  - (C) The office of the gender equity counselor of the University of Hawaii;
  - (D) The Hawaii State Coalition Against Domestic Violence;
  - ~~[(6)]~~ (E) The Salvation Army;
  - ~~[(7)]~~ Sisters Offering Support;
  - ~~(8)]~~ (F) The Sex Abuse Treatment Center;
  - ~~[(9)]~~ (G) GirlFest;
  - ~~[(10)]~~ (H) Na Loio Immigrant Rights and Public Interest Legal Center;
  - ~~[(11)]~~ (I) The Domestic Violence [Clearinghouse and Legal Hotline;] Action Center; and
  - ~~[(12)]~~ (J) The Hawaii State Coalition Against Sexual Assault.

~~[The Task Force]~~ Task force members shall serve without compensation but ~~[shall]~~ may be reimbursed for expenses, including travel expenses, necessary for the performance of their duties~~[-]~~, subject to the availability of funds.”

2. By amending subsections (d) and (e) of section 2 to read:

“(d) Not less than twenty days prior to the convening of the regular sessions of 2007 ~~[and]~~, 2008, and 2009, the task force shall provide to the legislature a report on its activities~~[-]~~; provided that not less than twenty days prior to the convening of the regular session of 2010, the task force shall provide the legislature a final report of its activities, including findings and recommendations, and any proposed legislation.

(e) The task force shall cease to exist on June 30, ~~[2008-]~~ 2010.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2008.

(Approved June 16, 2008.)

**ACT 177**

H.B. NO. 94

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
LIFE SETTLEMENTS  
PART I. GENERAL PROVISIONS**

§ -1 **Short title.** This chapter may be cited as the Life Settlements Act.

§ -2 **Definitions.** As used in this chapter, unless the content otherwise requires:

“Advertisement” means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, which are published, disseminated, circulated, or placed

before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a policy or an interest in a policy pursuant to a life settlement contract.

“Broker” means a person who, on behalf of an owner and for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and providers, represents only the owner, and owes a fiduciary duty to the owner to act according to the owner’s instructions, and in the best interest of the owner, notwithstanding the manner in which the broker is compensated. “Broker” does not include an attorney, certified public accountant, or financial planner retained in the type of practice customarily performed in their professional capacity to represent the owner, whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.

“Business of life settlements” means an activity involved in but not limited to offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking of life settlement contracts.

“Certificate” means a certificate issued pursuant to a group policy.

“Chronically ill” means:

- (1) Being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence;
- (2) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
- (3) Having a level of disability similar to that described in paragraph (1) as determined by the United States Secretary of Health and Human Services.

“Commissioner” means the insurance commissioner.

“Financing entity” means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but:

- (1) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one or more policies; and
- (2) Who has an agreement in writing with one or more providers to finance the acquisition of life settlement contracts.

The term shall not include a non-accredited investor or purchaser.

“Financing transaction” means a transaction in which a licensed provider obtains financing from a financing entity including, without limitation, any secured or unsecured financing, any securitization transaction, or any securities offering that is either registered or exempt from registration under federal and state securities law.

“Insured” means the person covered under the policy being considered for sale in a life settlement contract.

“Life expectancy” means the arithmetic mean of the number of months the insured under the policy to be settled can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data.

“Life insurance producer” means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to article 9A of chapter 431.

“Life settlement contract” means:

- (a) (1) A written agreement entered into between a provider and an owner, establishing the terms under which compensation or any thing of value will be paid, which compensation or thing of value is less than the expected death benefit of the owner’s policy or certificate, in return for the

owner's assignment, transfer, sale, devise, or bequest of the death benefit or any portion of the policy or certificate for compensation, where the minimum value of the contract is greater than a cash surrender value or accelerated death benefit available under the policy or certificate at the time of an application for a life settlement contract;

- (2) The transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy or certificate if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state; or
- (3) (A) A written agreement for a loan or other lending transaction, secured primarily by an individual or group policy; or
- (B) A premium finance loan made for a policy on or before the date of issuance of the policy where:
  - (i) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;
  - (ii) The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or
  - (iii) The owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

“Life settlement contract” does not include:

- (b) (1) A policy loan by a life insurance company pursuant to the terms of the policy or accelerated death provisions contained in the policy, whether issued with the original policy or as a rider;
- (2) A premium finance loan, as defined herein, or any loan made by a bank or other licensed financial institution, so long as neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;
- (3) A collateral assignment of a policy by an owner;
- (4) A loan made by a lender that does not violate any insurance premium finance law of this state; provided that the loan does not qualify as a life settlement contract;
- (5) An agreement where all the parties:
  - (A) Are closely related to the insured by blood or law; or
  - (B) Have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;
- (6) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
- (7) A bona fide business succession planning arrangement:
  - (A) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;
  - (B) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

- (C) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;
- (8) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or
- (9) Any other contract, transaction, or arrangement that is a life settlement contract and that the commissioner determines is not of the type intended to be regulated by this chapter.

"Net death benefit" means the amount of the policy or certificate to be settled less any outstanding debts or liens.

"Owner" means the owner of a policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract, but shall not be limited to an owner of a policy or a certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition, except where specifically addressed.

"Owner" does not include:

- (1) Any provider or other licensee under this chapter;
- (2) A qualified institutional buyer as defined in Rule 144A of the Securities Act of 1933, as amended;
- (3) A financing entity;
- (4) A special purpose entity; or
- (5) A related provider trust.

"Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

"Person" means any natural person or legal entity, including but not limited to a partnership, limited liability company, association, trust, or corporation.

"Policy" means an individual or group policy, certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

"Premium finance loan" means a loan made primarily for the purposes of making premium payments on a policy, which loan is secured by an interest in such policy.

"Provider" means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner. The term does not include:

- (1) Any bank, savings bank, savings and loan association, or credit union;
- (2) A licensed lending institution or creditor or secured party pursuant to a premium finance loan agreement that takes an assignment of a policy or certificate as collateral for a loan;
- (3) The insurer of a policy or rider to the extent of providing accelerated death benefits, riders, or cash surrender value;
- (4) Any natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of a policy or certificate for compensation or anything of value less than the expected death benefit payable under the policy;
- (5) A purchaser;
- (6) Any authorized or eligible insurer that provides stop loss coverage to a provider, purchaser, financing entity, special purpose entity, or related provider trust;
- (7) A financing entity;
- (8) A special purpose entity;

- (9) A related provider trust;
- (10) A broker; or
- (11) An accredited investor or qualified institutional buyer as defined respectively in Rule 501 of Regulation D and Rule 144A of the Securities Act of 1933, as amended, who purchases a life settlement contract from a provider.

“Purchased policy” means a policy or certificate that has been acquired by a provider pursuant to a life settlement contract.

“Purchaser” means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust that is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a policy or a certificate that has been the subject of a life settlement contract.

“Related provider trust” means a titling trust or other trust established by a licensed provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction, that includes a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to life settlement transactions available to the insurance division as if those records and files were maintained directly by the licensed provider.

“Settled policy” means a policy or certificate that has been acquired by a provider pursuant to a life settlement contract.

“Special purpose entity” means a corporation, partnership, trust, limited liability company, or other legal entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or provider in connection with a transaction in which the securities in the special purpose entity:

- (1) Are acquired by the owner or by a “qualified institutional buyer” as defined in Rule 144A of the Securities Act of 1933, as amended; or
- (2) Pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

“Stranger-originated life insurance” or “STOLI” means a practice or plan to initiate a policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured, and includes:

- (1) Arrangements in which life insurance is purchased with resources or guarantees from or through a person or entity who at the time of policy inception, could not lawfully initiate the policy by oneself or itself, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy, the policy benefits, or both, to a third party; and
- (2) Trusts created to give the appearance of insurable interest and used to initiate policies for investors.

“STOLI” does not include those practices set forth in subsection (b) of the definition of “life settlement contract”.

“Terminally ill” means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.

**§ -3 Licensing requirements.** (a) No person, wherever located, shall act as a provider or broker with an owner who is a resident of this state, without first having obtained a license from the commissioner.

(b) Application for a provider or broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a fee in the amount provided by section 431:7-101.

(c) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or the producer’s home state

for at least one year and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a broker.

(d) Not later than thirty days from the first day of operating as a broker, the life insurance producer shall notify the commissioner that the life insurance producer is acting as a broker on a form prescribed by the commissioner, and shall pay a fee in the amount provided by section 431:7-101. Notification shall include an acknowledgement by the life insurance producer that the life insurance producer will operate as a broker in accordance with this chapter.

(e) The insurer that issued the policy that is the subject of a life settlement contract shall not be responsible for any act or omission of a broker, provider, or purchaser, arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the provider, purchaser, or broker in connection with the life settlement contract.

(f) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, and whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without obtaining a license as a broker.

(g) Licenses may be renewed every year on their anniversary date upon payment of fees in the amounts required under section 431:7-101. Failure to pay the fees within the terms prescribed shall result in the automatic inactivation of the license.

(h) The applicant shall provide such information as the commissioner may require on forms prepared by the commissioner. The commissioner shall have authority, at any time, to require such applicant to fully disclose the identity of its stockholders, other than stockholders owning fewer than ten per cent of the shares of an applicant whose shares are publicly traded, and the identity of its partners, officers, and employees. The commissioner may, in the exercise of the commissioner's sole discretion, refuse to issue such a license in the name of any person if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards under subsection (j).

(i) A license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license, if those persons are named in the application and any supplements to the application.

(j) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and may issue a license if the commissioner finds that the applicant:

- (1) If a provider, has provided a detailed plan of operation;
- (2) Is competent and trustworthy and intends to transact its business in good faith;
- (3) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied;
- (4) If a legal entity is formed or organized pursuant to the laws of this state or is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and
- (5) Has provided to the commissioner an anti-fraud plan that meets the requirements of section -48.

(k) The commissioner shall not issue any license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or unless the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.



(l) Each licensee shall file with the commissioner on or before the first day of March of each year an annual statement containing the information as the commissioner by rule may prescribe.

(m) A provider may not use any person to perform the functions of a broker unless the person holds a current, valid license as a broker.

(n) A broker may not use any person to perform the functions of a provider as defined in this chapter unless such person holds a current, valid license as a provider, and as provided in this section.

(o) A provider or broker shall provide to the commissioner new or revised information about officers, ten per cent or more stockholders, partners, directors, members, or designated employees within thirty days of the change.

(p) An individual licensed as a broker shall complete on a biennial basis fifteen hours of training related to life settlements and life settlement transactions, as required by the commissioner; provided that a life insurance producer who is operating as a broker pursuant to this section shall not be subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

**§ -4 License suspension, revocation, or refusal to renew.** (a) The commissioner may suspend, revoke, or refuse to renew the license of any licensee if the commissioner finds that:

- (1) There was any material misrepresentation in the application for the license;
- (2) The licensee or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;
- (3) The provider demonstrates a pattern of unreasonably withholding payments to policy owners;
- (4) The licensee no longer meets the requirements for initial licensure;
- (5) The licensee or any officer, partner, member, or director has been convicted of a felony, or of any misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless of whether a judgment of conviction has been entered by the court;
- (6) The provider has entered into any life settlement contract that has not been approved pursuant to this chapter;
- (7) The provider has failed to honor contractual obligations set out in a life settlement contract;
- (8) The provider has assigned, transferred, or pledged a settled policy to a person other than a provider licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined respectively in Rule 501 of Regulation D or Rule 144A of the federal Securities Act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or
- (9) The licensee or any officer, partner, member, or key management personnel has violated this chapter.

(b) Before the commissioner may deny a license application or suspends, revokes, or refuses to renew the license of any licensee under this chapter, the commissioner shall conduct a hearing in accordance with chapter 91.

**§ -5 Contract requirements.** (a) No person may use any form of life settlement contract in this state unless it has been filed with and approved, if required,

by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions, if any, for life insurance forms, policies, and contracts.

(b) No insurer may, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.

(c) A person shall not use a life settlement contract form or provide to an owner a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of sections -21, -31, -33, and -43 of this chapter or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner. At the commissioner's discretion, the commissioner may require the submission of advertising material.

**§ -6 Reporting requirements and privacy.** (a) For any policy settled within five years of policy issuance, each provider shall file with the commissioner on or before March 1 of each year an annual statement containing the information as the commissioner may prescribe by rule. In addition to any other requirements, the annual statement shall:

- (1) Specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year; and
- (2) Include the names of the insurance companies whose policies have been settled and the brokers that have settled said policies.

The information shall be limited to only those transactions where the insured is a resident of this state and shall not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the owner or the insured.

Every provider that wilfully fails to file an annual statement as required in this section, or wilfully fails to reply within thirty days to a written inquiry by the commissioner in connection therewith, shall, in addition to other penalties provided by this chapter, be subject, upon due notice and opportunity to be heard, to a penalty of up to \$250 per day of delay, not to exceed \$25,000 in the aggregate, for each such failure.

(b) Except as otherwise allowed or required by law, a provider, broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure:

- (1) Is necessary to effect a life settlement contract between the owner and a provider, and the owner and insured have provided prior written consent to the disclosure;
- (2) Is necessary to effectuate the sale of life settlement contracts, or interests therein, as investments, so long as the sale is conducted in accordance with applicable state and federal securities law and the owner and the insured have both provided prior written consent to the disclosure;
- (3) Is provided in response to an investigation or examination by the commissioner pursuant to the requirements of section -17 or any other governmental officer or agency;

- (4) Is a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider shall be required to comply with the confidentiality requirements of this section;
- (5) Is necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status. For the purposes of this paragraph, the term "authorized representative" shall not include any person who has or may have any financial interest in the life settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity. A provider or broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this section; or
- (6) Is required to purchase stop loss coverage.
- (c) Non-public personal information solicited or obtained in connection with a proposed or actual life settlement contract shall be subject to the provisions applicable to financial institutions under the federal Gramm Leach Bliley Act, P.L. 106-102 (1999), and all other applicable state and federal laws relating to confidentiality of non-public personal information.

## PART II. EXAMINATIONS

**§ -11 Examination.** (a) The commissioner may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner may order any licensee or applicant to produce any records, books, files or other information reasonably necessary to ascertain whether such licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(b) In lieu of an examination under this chapter of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

(c) Records of all consummated transactions and life settlement contracts shall be maintained by the provider for three years after the death of the insured and shall be available to the commissioner for inspection during reasonable business hours.

**§ -12 Conduct of examinations.** (a) Upon determining that an examination under section -11 should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall use methods common to the examination of any life settlement licensee and shall use the guidelines and procedures set forth in an examiners' handbook adopted by a national organization.

(b) Every licensee or person from whom information is sought, including its officers, directors and agents, shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to

engage in the life settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to chapter 91.

(c) The commissioner shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence.

(d) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

(e) Nothing in this chapter shall be construed to limit the commissioner's authority to terminate or suspend an examination to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing in this chapter shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may, in the commissioner's sole discretion, deem appropriate.

**§ -13 Examination reports.** (a) Examination reports shall be comprised of only facts appearing upon the books, from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report and which shall become part of the report or to request a hearing on any matter in dispute.

(c) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

**§ -14 Confidentiality of examination information.** (a) Names and individual identification data for all owners, purchasers, and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner, unless the disclosure is to another regulator or is required by law.

(b) Except as otherwise provided in this chapter, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee, shall be confidential by law and privileged, shall not be subject to chapter 92F, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action

brought as part of the commissioner's official duties. The licensee being examined may have access to all documents used to make the report.

**§ -15 Examiner; conflict of interest.** (a) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being:

- (1) An owner;
- (2) An insured in a policy or life settlement contract; or
- (3) A beneficiary in a policy that is proposed for a life settlement contract.

(b) Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

**§ -16 Immunity from liability.** (a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

(b) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subsection does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (a).

(c) A person identified in subsection (a) or (b) shall be entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

**§ -17 Investigative authority of the commissioner.** The commissioner may investigate suspected fraudulent life settlement acts and persons engaged in the business of life settlements.

### PART III. ADVERTISING

**§ -21 Advertising.** (a) A broker or provider licensed pursuant to this chapter may conduct or participate in advertisements within this state. Such advertisements shall comply with all advertising and marketing laws or rules adopted by the commissioner that are applicable to life insurers or to brokers and providers licensed pursuant to this chapter.

(b) Advertisements shall be accurate, truthful, and not misleading in fact or by implication.

- (c) No person or trust shall:
  - (1) Directly or indirectly market, advertise, solicit, or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy; or

- (2) Use the words “free”, “no cost”, or words of similar import in the marketing, advertising, soliciting, or otherwise promoting of the purchase of a policy.

#### PART IV. DISCLOSURES AND GENERAL PROCEDURES

§ -31 **Disclosures to owners.** (a) The provider shall provide in writing, in a separate document that is signed by the owner and provider, the following information to the owner no later than the date the life settlement contract is signed by all parties:

- (1) The fact that possible alternatives to life settlement contracts exist, including but not limited to accelerated benefits offered by the issuer of the policy;
- (2) The fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax advisor;
- (3) The fact that the proceeds from a life settlement contract could be subject to the claims of creditors;
- (4) The fact that receipt of proceeds from a life settlement contract may adversely affect the recipients’ eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agencies;
- (5) The fact that the owner has a right to terminate a life settlement contract within fifteen days of the date it is executed by all parties and the owner has received the disclosures contained herein. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner’s estate of all proceeds and any premiums, loans, and loan interest to the provider;
- (6) The fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator’s acknowledgement that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract;
- (7) The fact that entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner and that assistance should be sought from a professional financial advisor;
- (8) The amount and method of calculating the compensation paid or to be paid to the broker, or any other person acting for the owner in connection with the transaction, wherein the term compensation includes anything of value paid or given;
- (9) The date by which the funds will be available to the owner and the transmitter of the funds;
- (10) The fact that the commissioner shall require delivery of a *Buyer’s Guide* or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process;
- (11) The following language:  
 “All medical, financial or personal information solicited or obtained by a provider or broker about an insured, including the insured’s identity

or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.”;

- (12) The fact that the commissioner shall require providers and brokers to print separate signed fraud warnings on their applications and on their life settlement contracts as follows:  
“Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.”;
- (13) The fact that the owner may be contacted by either the provider or broker or its authorized representative for the purpose of determining the owner’s health status or to verify the owner’s address;
- (14) The affiliation, if any, between the provider and the issuer of the policy to be settled;
- (15) That a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner’s instructions and in the best interest of the owner;
- (16) The name, address, and telephone number of the provider;
- (17) The name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and
- (18) The fact that a change of ownership could in the future limit the insured’s ability to purchase future insurance on the insured’s life because there is a limit to how much coverage insurers will issue on one life.

(b) The written disclosures shall be conspicuously displayed in any life settlement contract furnished to the owner by a provider, including any affiliations or contractual arrangements between the provider and the broker.

(c) A broker shall provide the owner and the provider with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:

- (1) The name, business address, and telephone number of the broker;
- (2) A full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;
- (3) A written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contract;
- (4) The name of each broker who receives compensation and the amount of compensation received by that broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract;
- (5) A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purpose of this paragraph, “gross offer” or “bid” means the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees; and

- (6) The fact that the failure to provide the disclosures or rights described in this section shall be deemed an unfair trade practice under section 480-2.

**§ -32 Disclosure to insurer.** (a) Without limiting the ability of an insurer from assessing the insurability of a policy applicant and determining whether or not to issue the policy, and in addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(b) If, as described in subsection (a)(3) of the definition of “life settlement contract” in section -2, the loan provides funds that can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the policy and loan, the application shall be rejected as a violation of the prohibited practices in section -41.

(c) If the financing does not violate section -41 in this manner, the insurance carrier:

- (1) May make disclosures to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy, including the following:

“If you have entered into a loan arrangement where the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

- (1) A change of ownership could lead to a stranger owning an interest in the insured’s life;
  - (2) A change of ownership could in the future limit your ability to purchase future insurance on the insured’s life because there is a limit to how much coverage insurers will issue on one life;
  - (3) Should there be a change of ownership and you wish to obtain more insurance coverage on the insured’s life in the future, the insured’s higher issue age, a change in health status, and/or other factors may reduce the ability to obtain coverage and/or may result in significantly higher premiums;
  - (4) You should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan”; and
- (2) May require certifications, such as the following, from the applicant and/or the insured:
- “(1) I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy;
  - (2) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and
  - (3) The borrower has an insurable interest in the insured.”



§ -33 **General rules.** (a) A provider entering into a life settlement contract with any owner of a policy, wherein the insured is terminally or chronically ill, shall first obtain:

- (1) If the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and
- (2) A document in which the insured consents to the release of the insured's medical records to a provider, broker, or insurance producer and, if the policy was issued less than two years from the date of application for a life settlement contract, to the insurance company that issued the policy.

The provider, broker, or its authorized representative shall be limited to contact for the purpose of determining the owner's health status or to verify the owner's address, once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(b) The insurer shall respond to a request for verification of coverage submitted by a provider, broker, or life insurance producer, not later than thirty calendar days of the date the request is received. The request for verification of coverage shall be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

(c) Before or at the time of execution of the life settlement contract, the provider shall obtain a witnessed document in which the owner:

- (1) Consents to the life settlement contract;
- (2) Represents that the owner has a full and complete understanding of the life settlement contract;
- (3) Represents that the owner has a full and complete understanding of the benefits of the policy;
- (4) Acknowledges that the owner is entering into the life settlement contract freely and voluntarily; and
- (5) For persons with a chronic or terminal illness or condition, acknowledges that the insured has a chronic or terminal illness and that the chronic or terminal illness or condition was diagnosed after the policy was issued.

(d) An insurer shall not unreasonably delay effecting change of ownership or beneficiary in connection with any life settlement contract lawfully entered into in this state or with a resident of this state.

(e) If a broker or life insurance producer performs any of the activities required of the provider under this section, the provider shall be deemed to have fulfilled the requirements of this section.

(f) If a broker performs those verification of coverage activities required of the provider, the provider is deemed to have performed those activities.

(g) Within twenty days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that policy that the policy has become subject to a life settlement contract. The notice shall be accompanied by the documents required by section -32(c).

(h) All life settlement contracts entered into in this state shall provide that the owner may rescind the contract on or before fifteen days after the date it is executed by all parties thereto. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed

to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

(i) Within three business days after receipt from the owner of documents to effect the transfer of the policy, the provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the owner within three business days of acknowledgement of the transfer from the insurer.

(j) Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner shall render the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. A failure to give written notice of the right of rescission hereunder shall toll the right of rescission until thirty days after the written notice of the right of rescission has been given.

(k) Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract shall be computed as a percentage of the offer obtained, not the face value of the policy. Nothing in this section shall be construed as prohibiting a broker from reducing such broker's fee below this percentage if the broker so chooses.

(l) The broker shall disclose to the owner anything of value paid or given to a broker and that relates to a life settlement contract.

(m) No person at any time prior to or at the time of the application for, or issuance of, a policy, or during a two-year period commencing with the date of issuance of the policy, shall enter into a life settlement regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur. This prohibition shall not apply if the owner certifies to the provider that:

- (1) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy; provided that the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered under a group policy shall be calculated without regard to a change in insurance carriers; provided further that the coverage has been continuous and under the same group sponsorship; or
- (2) The owner submits independent evidence to the provider that one or more of the following conditions have been met within the two-year period:
  - (A) The owner or insured is chronically or terminally ill;
  - (B) The owner or insured disposes of ownership interests in a closely-held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the policy was initially issued;
  - (C) The owner's spouse dies;
  - (D) The owner divorces the owner's spouse;
  - (E) The owner retires from full-time employment;
  - (F) The owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or
  - (G) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets;

- (3) Copies of the independent evidence required by subsection (m)(2) shall be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. Nothing in this section shall prohibit an insurer from exercising its right to contest the validity of any policy;
- (4) If the provider submits to the insurer a copy of independent evidence required by subsection (m)(2) when the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy shall be deemed to establish that the life settlement contract satisfies the requirements of this section.

§ -34 **Buyer's guide.** The commissioner by rule shall require delivery of a *Buyer's Guide* or a similar consumer advisory package to owners during the process of soliciting a life settlement contract.

**PART V. MISCELLANEOUS PROVISIONS**

- § -41 **Prohibited practices.** (a) It is unlawful for any person to:
- (1) Enter into a life settlement contract if the person knows or reasonably should have known that the policy was obtained by means of a false, deceptive, or misleading application for such policy;
  - (2) Engage in any transaction, practice, or course of business if the person knows or reasonably should have known that the intent was to avoid the notice requirements of this chapter;
  - (3) Engage in any fraudulent act or practice in connection with any transaction relating to any life settlement contract involving an owner who is a resident of this state;
  - (4) Issue, solicit, market, or otherwise promote the purchase of a policy for the purpose of or with an emphasis on settling the policy;
  - (5) Enter into a premium finance agreement with any person or agency, or any person affiliated with the person or agency, pursuant to which the person shall receive any proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any life settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement; provided that any payments, charges, fees or other amounts in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or to the owner's estate if the owner not living at the time of the determination of the overpayment;
  - (6) With respect to any policy or life settlement contract and a broker, knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with such broker;
  - (7) With respect to any policy or life settlement contract and a provider, knowingly enter into a life settlement contract with an owner, if, in connection with such life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control

- with such provider or the financing entity or related provider trust that is involved in such life settlement contract;
- (8) With respect to a provider, enter into a life settlement contract unless the life settlement contract promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is “free” for any period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of this chapter;
  - (9) With respect to any life insurance producer, insurance company, broker, or provider, make any statement or representation to the applicant or policyholder in connection with the sale or financing of a policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy;
  - (10) Knowingly and intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter; and
  - (11) With respect to a person in the business of life settlements, knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.
- (b) A violation of this section shall be deemed a fraudulent life settlement act.

**§ -42 Fraudulent life settlement acts prohibited.** It is a violation of this chapter for any person, provider, broker, or any other party related to the business of life settlements, to commit a fraudulent life settlement act.

For the purposes of this section, “fraudulent life settlement act” includes:

- (1) Acts or omissions committed by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or agents to engage in acts including but not limited to:
  - (A) Presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:
    - (i) An application for the issuance of a policy or life settlement contract;
    - (ii) The underwriting of a policy or life settlement contract;
    - (iii) A claim for payment or benefit pursuant to a policy or life settlement contract;
    - (iv) Premiums paid on a policy;
    - (v) Payments and changes in ownership or beneficiary made in accordance with the terms of a policy or life settlement contract;
    - (vi) The reinstatement or conversion of a policy;
    - (vii) In the solicitation, offer to enter into, or effectuation of a policy or life settlement contract;
    - (viii) The issuance of written evidence of a policy or life settlement contract;
    - (ix) Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a policy; or

- (x) Entering into any practice or plan that involves stranger-originated life insurance;
- (B) Failing to disclose to the insurer, where the insurer requests such disclosure, that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy;
- (C) Employing any device, scheme, or artifice to defraud in the business of life settlements; or
- (D) In the solicitation, application, or issuance of a policy, employing any device, scheme, or artifice in violation of state insurable interest laws;
- (2) In the furtherance of a fraud or to prevent the detection of a fraud, any person commits or permits its employees or its agents to:
  - (A) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of life settlements;
  - (B) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
  - (C) Transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements;
  - (D) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner;
  - (E) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a provider, insurer, insured, owner, insurance, policy owner, or any other person engaged in the business of life settlements or insurance;
  - (F) Knowingly and with intent to defraud, enter into, broker, or otherwise deal in a life settlement contract, the subject of which is a policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the owner or the owner's agent intended to defraud the policy's issuer;
  - (G) Attempt to commit, assist, aid, or abet in the commission of, or conspire to commit the acts or omissions specified in this definition; or
  - (H) Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter.

**§ -43 Fraud warning required.** (a) Life settlement contracts and applications for life settlement contracts, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(b) The lack of a statement as required in subsection (a) shall not constitute a defense in any prosecution for a fraudulent life settlement act.

**§ -44 Mandatory reporting of fraudulent life settlement acts.** (a) Any person engaged in the business of life settlements having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

**§ -45 Immunity from liability.** (a) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

- (1) The commissioner or the commissioner's employees, agents or representatives;
- (2) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;
- (3) A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives;
- (4) Any regulatory body or their employees, agents, or representatives, overseeing life insurance, life settlements, securities, or investment fraud;
- (5) The life insurer that issued the policy covering the life of the insured; or
- (6) The licensee and any agents, employees, or representatives.

(b) Subsection (a) shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that subsection (a) does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) A person identified in subsection (a) shall be entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subsection (a).

**§ -46 Confidentiality.** (a) The documents and evidence provided pursuant to section -45 or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(b) Subsection (a) does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

- (1) In administrative or judicial proceedings to enforce laws administered by the commissioner;
- (2) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing

fraudulent life settlement acts or to the National Association of Insurance Commissioners; or

(3) At the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(c) Release of documents and evidence under subsection (b) does not abrogate or modify the privilege granted in subsection (a).

**§ -47 Other law enforcement or regulatory authority.** This chapter shall not:

(1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(2) Preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder;

(3) Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the insurance division; or

(4) Limit the powers granted elsewhere by the laws of this state to the commissioner or the insurance fraud investigations unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

**§ -48 Life settlement anti-fraud initiatives.** (a) Providers and brokers shall have in place anti-fraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective anti-fraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Anti-fraud initiatives shall include:

(1) Fraud investigators, who may be provider or broker employees or independent contractors; and

(2) An anti-fraud plan that shall be submitted to the commissioner. The anti-fraud plan shall include but not be limited to:

(A) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) A description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(C) A description of the plan for anti-fraud education and training of underwriters and other personnel; and

(D) A description or chart outlining the organizational arrangement of the anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(b) Anti-fraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

**§ -49 Injunctions; civil remedies; cease and desist.** (a) In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, the commissioner may seek an injunc-

tion in a court of competent jurisdiction in the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the commissioner determines necessary to restrain the person from further committing the violation.

(b) Any person damaged by the acts of another person in violation of this chapter or any rule implementing this chapter, may bring a civil action for damages against the person committing the violation in a court of competent jurisdiction.

(c) The commissioner may issue a cease and desist order upon a person who violates any provision of this chapter, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner, in accordance with chapter 91.

(d) When the commissioner finds that such an action presents an immediate danger to the public and requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order shall be effective immediately upon service of a copy of the order on the respondent and shall remain effective for ninety days. If the insurance division begins non-emergency cease and desist proceedings under subsection (a), the emergency cease and desist order shall remain effective, absent an order by an appellate court of competent jurisdiction pursuant to chapter 91. In the event of a wilful violation of this chapter, the trial court may award statutory damages in addition to actual damages in an additional amount up to three times the actual damage award. The provisions of this chapter may not be waived by agreement. No choice of law provision may be used to prevent the application of this chapter to any life settlement contract in which a party to the settlement is a resident of this state.

**§ -50 Penalties.** (a) The commissioner may levy a civil penalty not exceeding \$10,000 and the amount of the claim for each violation upon any person, including those persons and their employees licensed pursuant to this chapter, who is found to have committed a fraudulent life settlement act or violated any other provision of this chapter.

(b) The license of a person licensed under this chapter who commits a fraudulent life settlement act shall be revoked for a period of at least one year.

(c) The penalties under this chapter are cumulative and may be imposed in addition to any other penalties authorized by law.

**§ -51 Unfair trade practices.** A violation of this chapter shall be considered an unfair trade practice pursuant to section 480-2 and subject to the penalties under chapter 480.

**§ -52 Conflict of laws.** (a) If there is more than one owner on a single policy, and the owners are residents of different states, the life settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured shall govern in the event that equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(b) A provider from this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts, shall be governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither that state nor this State regulates the transaction upon which the owner



is entering. For transactions in those states, however, the provider shall maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the insurance division.

(c) If there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider shall comply with those laws.

§ -53 Authority to adopt rules. The commissioner may adopt rules to implement this chapter pursuant to chapter 91.”

SECTION 2. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The commissioner shall collect in advance the following fees:

- (1) Certificate of authority: Issuance .....\$900
- (2) Organization of domestic insurers and affiliated corporations:
  - (A) Application and all other papers required for issuance of solicitation permit, filing ..... \$1,500
  - (B) Issuance of solicitation permit..... \$150
- (3) Producer’s license:
  - (A) Issuance, regular license..... \$50
  - (B) Issuance, temporary license..... \$50
- (4) Nonresident producer’s license: Issuance ..... \$75
- (5) Independent adjuster’s license: Issuance..... \$75
- (6) Public adjuster’s license: Issuance ..... \$75
- (7) Workers’ compensation claim adjuster’s limited license: Issuance ..... \$75
- (8) Independent bill reviewer’s license: Issuance..... \$80
- (9) Limited producer’s license: Issuance ..... \$60
- (10) Managing general agent’s license: Issuance ..... \$75
- (11) Reinsurance intermediary’s license: Issuance..... \$75
- (12) Surplus lines broker’s license: Issuance..... \$150
- (13) Service contract provider’s registration: Issuance ..... \$75
- (14) Approved course provider certificate: Issuance .....\$100
- (15) Approved continuing education course certificate: Issuance ..... \$30
- (16) Vehicle protection product warrantor’s registration: Issuance..... \$75
- (17) Criminal history record check..... \$20
- (18) Limited line motor vehicle rental company producer’s license: Issuance..... \$1,000
- (19) Life settlement contract provider’s license: Issuance ..... \$75
- (20) Life settlement contract broker’s license: Issuance ..... \$75
- ~~(19)~~ (21) Examination for license: For each examination, a fee to be established by the commissioner.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$50 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) \$75 per year for all services (including extension of the license) for a regularly licensed nonresident producer;

- (4) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) \$45 per year for all services (including extension of the license) for a workers' compensation claims adjuster's limited license;
- (7) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) \$45 per year for all services (including extension of the license) for a producer's limited license;
- (9) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (10) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) \$45 per year for all services (including extension of the license) for a licensed surplus lines broker;
- (12) \$75 per year for all services (including renewal of registration) for a service contract provider;
- (13) \$65 per year for all services (including extension of the certificate) for an approved course provider;
- (14) \$20 per year for all services (including extension of the certificate) for an approved continuing education course;
- (15) \$75 per year for all services (including renewal of registration) for a vehicle protection product warrantor;
- (16) \$20 for a criminal history record check; ~~and~~
- (17) \$600 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer[-];
- (18) \$75 per year for all services (including extension of the license) for a regularly licensed life settlement contract provider; and
- (19) \$75 per year for all services (including extension of the license) for a regularly licensed life settlement contract broker.

The services referred to in paragraphs (1) to ~~(17)~~ (19) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs."

SECTION 3. (a) A provider as defined in section 1 of this Act lawfully transacting business in this state prior to the effective date of this Act may continue to do so pending approval or disapproval of that person's application for a license as long as the application is filed with the insurance commissioner not later than thirty days after publication by the commissioner of an application form and instructions for licensure of providers. If the publication of the application form and instructions is prior to the effective date of this Act, then the filing of the application shall not be later than thirty days after the effective date of this Act. During the time that such an application is pending with the commissioner, the applicant may use any form of life settlement contract that has been filed with the commissioner pending approval thereof; provided that such form is otherwise in compliance with the provisions of this Act. Any person transacting business in this state under this provision shall be obligated to comply with all other requirements of this Act.

(b) A person who has lawfully negotiated life settlement contracts between any owner residing in this state and one or more providers as defined in section 1 of this Act for at least one year immediately prior to the effective date of this Act may continue to do so pending approval or disapproval of that person's application for a license as long as the application is filed with the commissioner not later than thirty

days after publication by the commissioner of an application form and instructions for licensure of brokers. If the publication of the application form and instructions is prior to the effective date of this Act, then the filing of the application shall not be later than thirty days after the effective date of this Act. Any person transacting business in this state under this provision shall be obligated to comply with all other requirements of this Act.

SECTION 4. The insurance commissioner shall submit annual reports to the legislature at least twenty days prior to the convening of the regular sessions of 2009 and 2010. The annual report shall include:

- (1) Any issues and concerns relating to the implementation and effects of this Act;
- (2) The total number and disposition of life settlement cases investigated by the insurance commissioner under this Act;
- (3) An evaluation by the insurance commissioner of the effectiveness of this Act in regulating life settlement contracts; and
- (4) Any recommendations, including proposed legislation, to improve the provisions of this Act.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval, and shall be repealed two years from the date of its approval.

(Approved June 16, 2008.)

**Note**

- 1. So in original.

**ACT 178**

S.B. NO. 2977

A Bill for an Act Relating to Child Support Enforcement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 576D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The agency shall:
  - (1) Establish a state parent locator service for the purpose of locating absent and custodial parents;
  - (2) Cooperate with other states in:
    - (A) Establishing paternity, if necessary;
    - (B) Locating an absent parent who is present in the [State] state and against whom any action is being taken under a Title IV-D program in any other state; and
    - (C) Securing compliance by [~~such~~] an absent parent with a support order issued by a court of competent jurisdiction in another state;
  - (3) Perform periodic checks of whether a parent is collecting unemployment compensation and, if so, to arrange, either through agreement with

- the parent or by bringing legal process, to have a portion of the compensation withheld, to fulfill the parent's child support obligations;
- (4) Notify annually each custodial parent, guardian, protective payee, or other person having custody of the child of an Aid to Families with Dependent Children family of the amount of child support collected on behalf of the child in the family. For the purpose of this section, "Aid to Families with Dependent Children family" means a family ~~[which]~~ that receives financial assistance under the federal Aid to Families with Dependent Children program or its successor;
  - (5) Establish and ~~[utilize]~~ use procedures ~~[which]~~ that shall require a debtor parent to give security, post bond, or give some other guarantee to secure payment of delinquent child support. The procedures shall apply to all debtor parents of children described under section 576D-3. The procedures shall include advance notice to the debtor parent in full compliance with the State's procedural due process requirements. The agency shall develop guidelines, which are available to the public, to determine whether the case is inappropriate for application of this requirement;
  - (6) Establish and ~~[utilize]~~ use procedures by which information regarding the name of the debtor parent and the amount of delinquent child support owed by a debtor parent residing in the ~~[State]~~ state will be made available to any consumer reporting agency as defined in section 603(f) of the Fair Credit Reporting Act. The procedures shall be effectuated upon the agency being authorized to provide Title IV-D services, and shall include provisions on advance notice to the debtor parent whose information is being reported of the procedures, which shall be in full compliance with the State's procedural due process requirements, to contest the accuracy of the information;
  - (7) Establish and ~~[utilize]~~ use procedures ~~[which]~~ that will enforce liens against the real and personal property of a debtor parent who owes overdue support and who resides or owns property in the ~~[State.]~~ state. The agency shall further establish guidelines ~~[which]~~ that are available to the public to determine whether the case is inappropriate for application of this paragraph;
  - (8) Establish and ~~[utilize]~~ use procedures for the notification of a custodial parent that any income tax refund setoff under section 231-53 shall be ~~[credited to child support debts for past public assistance or foster care maintenance before any other debt;]~~ retained by the State in cases where medical support rights have been assigned to the State and the income tax refund setoff is applied to amounts designated in the child support order for medical purposes;
  - (9) Establish and ~~[utilize]~~ use procedures for prompt reimbursements of overpayments of child support debts from income tax refund setoffs under section 231-53. The procedures shall provide for the reimbursements to be made by the custodial parent or agency;
  - (10) Establish and ~~[utilize]~~ use procedures for periodic review and modification of child support orders in accordance with Title IV-D;
  - (11) Provide notice not less than once every three years to those parents subject to an order of support informing the parents of their right to request the agency to review and, if appropriate, adjust the order of support pursuant to the guidelines established under section 576D-7;
  - (12) Establish and operate a state case registry ~~[which]~~ that contains records of:
    - (A) Each case in which services are being provided by the agency under the state plan; and

(B) Each support order established or modified in the [State] state on or after October 1, 1998.

[Such] The records shall use standardized data elements for both parents, including but not limited to names, residential and mailing addresses, telephone numbers, driver's license numbers, names, addresses, and telephone number of the party's employer, social security numbers and other uniform identification numbers, dates of birth, and case identification numbers, and contain [such] any other information as required by the United States Secretary of [the Department of] Health and Human Services. In each case with respect to subparagraph (A) and where a support order has been established, the case record shall include the amount of monthly or other periodic support owed under the order, and other amounts, including but not limited to arrearages, due under the order, the amounts collected under the order, the birthdate of any child for whom the order requires the provision of support, and the amount of any lien imposed;

- (13) Perform other duties required under chapter 576B, the Uniform Interstate Family Support Act; and
- (14) Perform other duties required under Title IV-D.”

SECTION 2. Section 576D-11, Hawaii Revised Statutes, is amended to read as follows:

“**§576D-11 Staff.** The attorney general shall appoint, without regard to chapter 76[, ~~an administrator; an assistant~~]:

- (1) An administrator;
- (2) An assistant administrator who shall serve as controller and whose duties shall include but not be limited to designing and implementing controls over all financial management systems, including electronic data processing systems, and developing an appropriate staffing plan; [and a]
- (3) An assistant administrator who shall serve as the policy administrator and whose duties shall include but not be limited to developing and implementing comprehensive policy and planning documents to guide operations to successful outcomes, including federal performance reporting and interstate activities; and
- (4) A staff attorney to serve as the supervisor of the administrative process activities and staff.

In addition, the attorney general shall appoint, pursuant to chapter 76, other personnel as may be required to discharge the functions of the child support enforcement agency. The staff attorney shall not be considered to be a deputy attorney general under chapter 28.”

SECTION 3. Section 576E-6, Hawaii Revised Statutes, is amended to read as follows:

“**§576E-6 Request for hearing; how made.** (a) Except as provided in subsection (b), any party who is aggrieved by the proposed order of the agency may, within ten days of service of a notice described in section 576E-5, obtain a hearing by sending a written request for hearing to the agency at the address from which the notice was sent.

(b) In the case of a proposed order to modify child support resulting from the agency's [periodic] review of support orders, a party aggrieved by the proposed order may request a hearing within thirty days of service of a notice described in section 576E-5.

(c) The agency, on its own behalf, may request a hearing after the commencement of an administrative proceeding pursuant to section 576E-5.

~~[(e)]~~ (d) Notice of the hearing under this section shall be served in accordance with section 576E-4.”

SECTION 4. Section 576E-7, Hawaii Revised Statutes, is amended to read as follows:

**“§576E-7 Failure to request hearing; effect.** If the parties fail to request a hearing pursuant to section 576E-6, the agency or a hearings officer shall sign the proposed order as the final order in the action.”

SECTION 5. Effective October 1, 2008, personnel employed by the family support division of the county of Kauai whose functions, duties, responsibilities, and activities relate to child support enforcement shall be transferred to the department of the attorney general. There is established two temporary civil service positions in the department of the attorney general to carry out the purposes of this Act.

Such employees holding civil service status shall be transferred to similar or corresponding positions in the department of the attorney general, subject to state personnel laws and this Act, without loss of salary, seniority, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges; provided that the employees possess the minimum qualifications for the class and/or position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, computer software and data, and other personal property made, used, acquired, or held by the family support division of the county of Kauai on September 30, 2008, relating to the functions transferred to the department of the attorney general shall be transferred with the functions to which they relate on October 1, 2008.

The provisions of this section are to be liberally construed to effectuate its purposes.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2008.

(Approved June 16, 2008.)

## ACT 179

S.B. NO. 2004

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 302A-443, Hawaii Revised Statutes, is amended as follows:

**“§302A-443 Administrative hearing procedures and subpoena power relating to the education of children with a disability.** (a) An impartial hearing may be requested by any parent or guardian of a child with a disability, or by the de-

partment, on any matter relating to the identification, evaluation, program, or placement of a child with a disability; provided that the hearing is requested:

- (1) Within two years of the date the parent, guardian, or department knew or should have known about the alleged action that formed the basis of the request for a hearing; and
  - (2) Notwithstanding paragraph (1), within ~~[ninety days]~~ one hundred and eighty calendar days of a unilateral special education placement, where the request is for reimbursement of the costs of the placement.
- (b) Subsection (a) shall not apply to a parent or guardian of a child with a disability if the parent or guardian was prevented from requesting the hearing due to:
- (1) Specific misrepresentations by the department that it had resolved the problem that formed the basis of the complaint; or
  - (2) The department's withholding from the parent or guardian information that was required by state or federal laws and regulations to provide a free, appropriate public education to a child with a disability.
- (c) The department shall adopt rules that conform to the requirements of any applicable federal statutes or regulations pertaining to the impartial hearing based on the education of a child with a disability. The rules shall ~~[require]~~ provide that any party may be present at the proceeding, be accompanied and advised by counsel or individuals with special knowledge or training with respect to the problems of children with a disability, may require witnesses to be under oath, cross-examine witnesses, and obtain a written or electronic verbatim record of the proceedings.
- (d) Any party to these hearings or the hearings officer shall have the right to compel the attendance of witnesses upon subpoena issued by the hearings officer. The fees for attendance shall be the same as for the fees of witnesses before circuit court. In case of the failure of any person to comply with a subpoena, a circuit court judge of the judicial circuit in which the witness resides, upon application of the hearings officer, shall compel attendance of the person.
- (e) No later than twenty days prior to the convening of each regular session of the legislature, the department shall submit a report that provides the total number of requests for a due process hearing relating to the reimbursement of costs for a child's placement filed by a parent or guardian of a child with a disability.
- (f) The department shall exercise oversight and monitoring of any child who has undergone unilateral special education placement as soon as practicable after the placement."

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved June 16, 2008.)

## ACT 180

S.B. NO. 2218

A Bill for an Act Relating to Electronic Monitoring.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 586-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) When a temporary restraining order is granted and the respondent or person to be restrained knows of the order, a knowing or intentional violation of the restraining order is a misdemeanor. A person convicted under this ~~[section]~~ subsection shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this ~~[section]~~ subsection as follows:

- (1) For a first conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of forty-eight hours and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and
- (2) For the second and any subsequent conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1) and (2), upon condition that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or intervention. Nothing in this ~~[section]~~ subsection shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor.

If the court finds that the defendant has knowledge of the location of any protected party’s residence, place of employment, or school, in addition to any other penalties provided in this subsection, the court may, as a condition of probation, prohibit contact with the protected party through the establishment of court-defined geographic exclusion zones, including the areas in and around the protected party’s residence, place of employment, or school, and order that the defendant wear a global positioning satellite tracking device designed to transmit and record the defendant’s location data. If the defendant enters a court-defined geographic exclusion zone, the defendant’s location data shall be immediately transmitted to the protected party and to the police through any appropriate means, including the telephone, an electronic beeper, or a paging device. The global positioning satellite tracking device and its tracking shall be administered by the court. If a court finds that the defendant has entered a geographic exclusion zone, the court shall revoke the probation and the defendant shall be fined, imprisoned, or both, as provided in this subsection. Based on the defendant’s ability to pay, the court may also order the defendant to pay the monthly costs or portion thereof for monitoring by the global positioning satellite tracking system.”

SECTION 2. Section 586-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:



“(a) Whenever an order for protection is granted pursuant to this chapter, a respondent or person to be restrained who knowingly or intentionally violates the order for protection is guilty of a misdemeanor. A person convicted under this [section] subsection shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this [section] subsection as follows:

- (1) For a first conviction for violation of the order for protection:
  - (A) That is in the nature of non-domestic abuse, the person may be sentenced to a jail sentence of forty-eight hours and be fined not more than \$150; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
  - (B) That is in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
- (2) For a second conviction for violation of the order for protection:
  - (A) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of non-domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than \$250; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
  - (B) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
  - (C) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than \$250; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
  - (D) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that is in the nature of non-domestic abuse, the person shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours and be fined not more than \$150; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine;
- (3) For any subsequent violation that occurs after a second conviction for violation of the same order for protection, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sen-

tence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence under subparagraphs (1)(A) and (2) (C), upon condition that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or intervention. Nothing in this ~~section~~ subsection shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense. All remedies for the enforcement of judgments shall apply to this chapter.

If the court finds that the defendant has knowledge of the location of any protected party's residence, place of employment, or school, in addition to any other penalties provided in this subsection, the court may, as a condition of probation, prohibit contact with the protected party through the establishment of court-defined geographic exclusion zones, including the areas in and around the protected party's residence, place of employment, or school, and order that the defendant wear a global positioning satellite tracking device designed to transmit and record the defendant's location data. If the defendant enters a court-defined geographic exclusion zone, the defendant's location data shall be immediately transmitted to the protected party and to the police through any appropriate means, including the telephone, an electronic beeper, or a paging device. The global positioning satellite tracking device and its tracking shall be administered by the court. If a court finds that the defendant has entered a geographic exclusion zone, the court shall revoke the probation and the defendant shall be fined, imprisoned, or both, as provided in this subsection. Based on the defendant's ability to pay, the court may also order the defendant to pay the monthly costs or portion thereof for monitoring by the global positioning satellite tracking system."

SECTION 3. The judiciary shall establish and implement the provisions relating to global satellite tracking devices under sections 1 and 2 of this Act within one year of the effective date of this Act.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2008 and shall be repealed on July 1, 2010.

(Approved June 16, 2008.)

## ACT 181

H.B. NO. 2372

A Bill for an Act Relating to Time Share Plans.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§514E- Limited permit.** (a) Notwithstanding any other provision of this chapter, the director may issue a limited permit to a developer permitting the offer

or sale, in this state, of an additional interest in a time share plan to an existing purchaser in the same time share plan; provided that:

- (1) The developer or an affiliated entity of the developer has a time share plan currently registered with the director; provided that the registration was originally approved or amended within seven years from the date of the offer or disposition, and the registration has not been terminated or withdrawn;
  - (2) The developer has not, during the two-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty. In the event the developer satisfies the requirement of paragraph (1) above through an affiliated entity, the developer has not, during the twenty-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty;
  - (3) In satisfaction of the disclosure requirements of section 514E-9, the purchaser is provided the time share disclosure documents the purchaser would have received if the purchase had occurred in the state or jurisdiction where the purchaser initially purchased the time share interest;
  - (4) The contract for purchase signed by the purchaser includes a notice that is the same as or similar to the rescission notice required pursuant to section 514E-9(a)(7); provided that the rescission period shall be at least seven days;
  - (5) All funds and any negotiable instruments received during the seven-day rescission period shall be placed in an escrow account in the state. The escrow agent shall be a bank, savings and loan association, or trust company authorized to do business in the state under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. The funds or negotiable instruments may be released from escrow; provided that the release is in accordance with section 514E-17 or 514E-18. Any escrow account established for any out-of-state time share plan offered under this subsection may be maintained in the state where the time share plan is located after the seven-day rescission period has expired; provided that the escrow agent submits to personal jurisdiction in this state;
  - (6) The contract for purchase shall contain the following statement in conspicuous type:  
 “THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY OWN AN INTEREST IN THIS TIME SHARE PLAN AND BECAUSE XXX (DEVELOPER OR AFFILIATE’S NAME) HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE)(AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS THE TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED STATUTES.”; and
  - (7) The offer complies with the provisions of sections 514E-11(2) to 514E-11(9), 514E-11(11) to 514E-11(13), and 514E-11.1.
- (b) Except as provided in subsection (a), the offer or sale of an additional interest in a time share plan by a developer in accordance with subsection (a) shall not otherwise be subject to any other provisions of this chapter.
- (c) Notwithstanding any other provision of this chapter, the director may issue a limited permit to a developer permitting the offer or sale by the developer, in this state, of a time share interest in a time share plan located outside of this state, but

within the United States, to an individual who currently owns a time share interest that was purchased from that developer, or from an affiliated entity of that developer; provided that:

- (1) The developer or an affiliated entity of the developer has a time share plan currently registered with the director; provided that the registration of the developer or an affiliated entity of the developer was originally approved or amended within seven years from the date of the offer or disposition and which registration has not been terminated or withdrawn;
- (2) The developer has not, during the two-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty. In the event the developer satisfies the requirement of paragraph (1) above through an affiliated entity, the developer has not, during the twenty-year period preceding the time of the offer, had a time share registration suspended, restricted, or revoked in any state or been convicted of an offense involving fraud or dishonesty;
- (3) The developer shall provide the purchaser with all time share disclosure documents required to be provided to purchasers as if the offer occurred in the state where the time share plan is located;
- (4) The contract for purchase shall include a notice that is the same as or similar to the rescission notice required pursuant to section 514E-9(a)(7); provided that the rescission period shall be at least seven days;
- (5) In satisfaction of section 514E-16, all funds and any negotiable instruments received during the seven-day rescission period shall be placed in an escrow account in the state. The escrow agent shall be a bank, savings and loan association, or trust company authorized to do business in the state under an escrow arrangement or a corporation licensed as an escrow depository under chapter 449. The funds or negotiable instruments may be released from escrow; provided that the release is in accordance with section 514E-17 or 514E-18. Any escrow account established for any out-of-state time share plan offered under this subsection may be maintained in the state where the time share plan is located after the seven-day rescission period has expired; provided that the escrow agent submits to personal jurisdiction in this state;
- (6) The developer shall provide the purchaser, in writing, either in the disclosure documents or otherwise, all of the following:
  - (A) A description of the type of time share plan offered, including the duration and operation of the time share plan;
  - (B) A description of the existing or proposed accommodations and amenities in the time share plan;
  - (C) A description of the method and timing for performing maintenance on the accommodations;
  - (D) If applicable, copies of the declaration, association articles of incorporation, association bylaws, and association rules and regulations; and
  - (E) The current annual budget for the time share plan;
- (7) The time share plan being offered is registered in the state where the time share plan is located; or in the event registration of the time share plan is not required in the state where the time share plan is located, the time share plan being offered is in compliance with the applicable laws of that state; and
- (8) The contract for purchase shall contain the following statement in conspicuous type:

“THIS TIME SHARE PLAN HAS NOT BEEN REVIEWED OR APPROVED BY THE STATE OF HAWAII BECAUSE YOU ALREADY OWN AN INTEREST IN A TIME SHARE PLAN THAT YOU PURCHASED FROM XXX (DEVELOPER OR AFFILIATE’S NAME), AND XXX HAS A TIME SHARE PLAN CURRENTLY REGISTERED WITH THE STATE OF HAWAII (INCLUDE REGISTRATION #). (IF APPLICABLE) (AFFILIATE) IS AN AFFILIATED ENTITY OF THE SELLER AS THAT TERM IS DEFINED IN CHAPTER 514E, HAWAII REVISED STATUTES. THE TIME SHARE INTEREST YOU ARE PURCHASING REQUIRES CERTAIN PROCEDURES TO BE FOLLOWED IN ORDER FOR YOU TO USE YOUR INTEREST. THESE PROCEDURES MAY BE DIFFERENT FROM THOSE FOLLOWED IN OTHER TIME SHARE PLANS. YOU SHOULD READ AND UNDERSTAND THESE PROCEDURES PRIOR TO PURCHASING.”

(d) The offer or sale of an interest in a time share plan by a developer in accordance with subsection (c) above shall be exempt from the requirements of sections 514E-3, 514E-4, 514E-5, 514E-6, 514E-7, 514E-10.5, and 514E-14; the disclosure statement requirements of sections 514E-9 and 514E-11(1); and the registration requirements of section 514E-10.

(e) A developer offering a time share plan under this section shall file an application on a form as set forth in subsection (g), along with payment of a one-time fee of \$1,000 per time share plan. Within ten days from receipt by the director of a completed application and fee, the director shall issue a limited permit to the developer reflecting that the filing has been accepted, and that the offering of the time share plan is permitted in accordance with the provisions of this section.

(f) If at any time the director determines that any requirement of this section has not been complied with, the developer shall be subject to any remedies set forth in section 514E-12.

(g) The application as described under subsection (e) shall be signed by an officer or principal of the developer, and shall contain the following information:

- (1) The name and principal address of the developer;
- (2) The name and address of the time share plan being offered;
- (3) The name and address of the managing entity of the time share plan;
- (4) The form of business entity of the developer; and
- (5) The name, address, and telephone number of the officer or principal signing the notice on behalf of the developer.

(h) A limited permit issued under this section shall be renewed by December 31 of each year. The developer shall submit a renewal application on a form prescribed by the director along with the renewal fee of \$50. The renewal application shall be deemed accepted upon receipt by the director of the renewal application and fee.

(i) For purposes of this section:

“Affiliated entity” means a person or other entity that, directly or indirectly through one or more intermediaries, is controlled by or under common control with the developer.

“Control,” “controlled by,” or “under common control with” means the possession of the power to direct or cause the direction of the management and policies of another person or entity, other than by commercial contract for goods or services. Control shall be presumed to exist if the developer has an ownership interest of at least fifty per cent in the other person or entity, or the developer has the same parent corporation as the other entity.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 16, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 182**

S.B. NO. 2879

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the partnership between parents, families, professionals, and students is cornerstone to the success of student achievement. From a student's first day of school until the completion of the student's education, hundreds, possibly thousands, of educational decisions have been made for or by that student. Until a student reaches the age of eighteen, most of those decisions are made by parents, family members, or guardians in consultation with teachers or education officials. However, when a student reaches the age of eighteen, that adult student is presumed to be capable of making the adult student's own educational decisions and to have the confidence to participate fully in meetings to make educational decisions, unless determined to be incapable of making decisions. Students at this transition point, regardless of their capacity, may benefit from continued participation, guidance, and advice from the people on whom they have always relied to make educational decisions.

With regard to the numerous decisions and planning activities related to a student with a disability who is receiving special education and related services, parents of adult students can only participate in these activities if they are either invited by the student or obtain legal guardianship over the student. While these options create a vehicle for parental participation, they are not comprehensive enough to meet the diverse needs of the students and families in our State.

The legislature further finds that guardianships are expensive, labor intensive, and involve a time-consuming process that results in the transfer of all decision-making authority from the student to the guardian. Some students may have the capacity and desire to make other life decisions for themselves, but do not feel confident in making educational decisions and may require continued assistance. There are also other families that philosophically strive to maintain the rights of their adult children, regardless of their capacity, and are able to do so because of the array of alternatives to guardianship in the health care, welfare, housing, and financial systems. In these instances, guardianship would not be an appropriate option.

The purpose of this Act is to provide a comprehensive array of options for adult students with a disability to ensure their ability to make educational decisions that are consistent with the needs of the student in a manner that is respectful to the values of the student and family by:

- (1) Establishing a power of attorney for special education;
- (2) Establishing the process to appoint an educational representative for an adult student who lacks capacity; and

- (3) Clarifying the authority of a guardian of an adult student.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . ADULT SPECIAL EDUCATION TRANSFER  
OF RIGHTS FOR STUDENTS WITH DISABILITIES  
UPON REACHING THE AGE OF MAJORITY**

**§302A- Power of attorney for special education.** (a) When a student with disabilities reaches the age of majority all rights are presumed to transfer to the adult student. The adult student is authorized to make any and all decisions related to the adult student’s education, including but not limited to individualized education programs.

(b) An adult student may give an individual instruction to assist in the development and implementation of the adult student’s educational programs. An adult student may execute a power of attorney for special education. Unless related to the student by blood, marriage, or adoption, an agent shall not be an owner, operator, or employee of the educational institution at which the adult student is receiving special education services. The power of attorney for special education shall be:

- (1) A written document;
- (2) Executed in the State of Hawaii;
- (3) Notated with the date of execution;
- (4) Specific in identifying the agent by first and last name and relationship to the adult student;
- (5) Indicative of whether the adult student retains the power to make educational decisions while the power is in effect;
- (6) Revocable, with the method of revocation stated in the document;
- (7) Signed by the adult student; and
- (8) Witnessed by one of the following methods:
  - (A) Signed by two individuals who either witnessed the signing of the instrument by the adult student or received the adult student’s acknowledgment of the veracity of the signature on the instrument; or
  - (B) Acknowledged before a notary public in the State of Hawaii.

(c) If the power of attorney for special education document does not include the provisions listed above, the power of attorney is invalid and fails to authorize an agent to make decisions for the adult student.

(d) Unless otherwise specified in the power of attorney for special education, the authority of an agent shall be effective throughout the adult student’s eligibility for special education, and shall cease to be effective upon revocation by the adult student.

**§302A- Revocation of the power of attorney for special education.**

(a) An adult student may revoke the designation of an agent in writing to the supervising teacher.

(b) A teacher, agent, or guardian who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising teacher and to any educational institution at which the student is receiving special education services.

(c) A decree of annulment, divorce, dissolution of marriage, or legal separation shall revoke a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for special education.

(d) A power of attorney for special education that conflicts with an earlier power of attorney for special education revokes the earlier power of attorney for special education to the extent of the conflict.

**§302A- Appointment of an educational representative; conditions.**

(a) An educational representative may be appointed if a student lacks decisional capacity to provide informed consent. A determination that the adult student lacks capacity, or that another condition exists that affects the adult student's instruction shall be made by a qualified licensed professional, such as the student's primary physician, psychologist, psychiatrist, or the department of health developmental disabilities division.

(b) The transfer of rights for an adult student who lacks capacity to an educational representative shall be valid throughout the adult student's eligibility for special education. Determinants of the lack of decisional capacity may include the following:

- (1) The student's inability to understand the nature, extent, and probable consequences of a proposed educational program or option, on a continuing or consistent basis;
- (2) The student's inability to make a rational evaluation of the benefits or disadvantages of a proposed educational decision or program as compared with the benefits or disadvantages of another proposed educational decision or program, on a continuing or consistent basis; or
- (3) The student's inability to communicate such understanding in any meaningful way.

Upon a determination that an adult student lacks decisional capacity to provide informed consent, the qualified professional shall document appropriately and make reasonable efforts to inform the adult student of the adult student's lack of capacity. The parent(s) of the adult student may act as the educational representative (unless the adult student is married, in which event the adult student's adult spouse shall be designated as the educational representative). If the parent or adult spouse is not available or competent to give informed consent, the department shall appoint the educational representative from among the following: a competent adult brother or sister, adult aunt or uncle, or grandparent. If these relatives are not willing and able to serve as the adult student's educational representative, then a surrogate parent (who is not an employee of the department of education) shall be designated to serve in this capacity by the department.

**§302A- Reconsideration of the need for an educational representative.**

(a) If the adult student, educational representative, or qualified professional believes the adult student has regained decisional capacity, the adult student shall be assessed for capacity by a qualified professional who shall determine whether or not the adult student has regained decisional capacity and shall document the decision and the basis for the decision and provide the findings of the reconsideration in writing to be entered into the adult student's educational record. The qualified professional shall notify the adult student and the educational representative of any changes in the adult student's educational program.

(b) A special education decision made by an educational representative for an adult student shall be effective without judicial approval.

**§302A- Decisions by guardian.** Absent a court order to the contrary, a special education decision of a guardian appointed pursuant to chapter 560 takes precedence over that of an agent or educational representative.



**§302A- Duties and roles of the agent and educational representative.** (a) The agent and educational representative shall have the same duties and responsibilities.

(b) The agent and the educational representative shall be afforded the opportunity to participate in meetings with respect to:

- (1) The identification, evaluation, and educational placement of the student;
- (2) The provision of free, appropriate public education to the student; and
- (3) The provision of input in accordance with the adult student’s individual instructions or other wishes, if any, to the extent known.

Otherwise, the agent and the educational representative shall participate in accordance with the determination of the student’s best interest. In determining the student’s best interest, the student’s personal values, to the extent known, shall be taken into consideration.

**§302A- Educational information.** The agent for the power of attorney for special education or educational representative is authorized to make educational decisions for a student and has the same rights as the student to request, receive, examine, copy, and consent to the disclosure of the individualized education plan or any other educational records.

**§302A- Effect of copy.** A copy of a transfer of student’s rights, revocation of the power of attorney for special education, the finding of lack of capacity, or the reconsideration of the appointment of an educational representative has the same effect as the original.”

SECTION 3. This Act shall take effect on July 1, 2008.

(Approved June 17, 2008.)

**ACT 183**

H.B. NO. 523

A Bill for an Act Relating to Children.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§587- Foster children; guiding principles.** (a) The department, as foster or permanent custodian, shall abide by the following guiding principles and shall ensure that foster children:

- (1) Live in a safe and healthy home, free from physical, psychological, sexual, and other abuse;
- (2) Have adequate:
  - (A) Food that is nutritious and healthy;
  - (B) Clothing;
  - (C) Medical, dental and orthodontic, and corrective vision care; and
  - (D) Mental health services;
- (3) Have supervised in-person contact and telephone or mail correspondence with the child’s parents and siblings while the child is in foster care unless prohibited by court order;
- (4) Have direct contact with a social worker, guardian ad litem, and probation officer;

- (5) May freely exercise their own religious beliefs, including refusal to attend any religious activities and services;
  - (6) Have a personal bank account and assistance managing their personal income, consistent with the child's age and development, unless prohibited due to safety or health concerns;
  - (7) Have the right to attend school and participate in appropriate extracurricular activities, and, if a child is moved during a school year, complete the school year at the same school, if practicable; and
  - (8) Are provided with life skills training and a transition plan starting at age twelve to provide adequate transitioning for children aging out of the foster care system. The department shall provide written information to all foster children twelve years of age or older and their foster parents about available independent living programs, including available foster youth organizations, transitional planning services, and independent living case management programs.
- (b) The family court may issue any necessary orders, sua sponte or upon appropriate motion, to the department of education, department of human services, or department of health to ensure adherence to the guiding principles enumerated in subsection (a).”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 184**

S.B. NO. 2373

A Bill for an Act Relating to Pseudoephedrine Sales.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 329-75, Hawaii Revised Statutes, is amended to read as follows:

**“§329-75 Sales of products, mixtures, or preparations containing pseudoephedrine; reporting requirement for wholesalers.** (a) Notwithstanding any other law to the contrary, a pharmacy or retailer may [~~dispense,~~] sell[~~;~~] or distribute to a person without a prescription not more than 3.6 grams per day, without regard to the number of transactions, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers[~~;~~] as the only active ingredient or in combination with other active ingredients; provided that the pharmacy or retailer [~~complies~~] shall comply with the following conditions:

- (1) The product, mixture, or preparation shall be [~~dispensed,~~] sold[~~;~~] or distributed from an area not accessible by customers or the general public, such as behind the counter or in a locked display case and where the seller delivers the product directly into the custody of the purchaser; [~~and~~]

- (2) Any person purchasing or otherwise acquiring any product, mixture, or preparation shall[  
  - (A) ~~Produce~~ produce proper identification containing the photograph, date of birth, printed name, [~~and~~] signature, and address of the individual obtaining the [~~controlled~~] substance; [~~and~~
  - (B) ~~Sign a written log, receipt, or other program or mechanism approved by the administrator, showing the date of the transaction, name and address of the person, and the amount of the compound, mixture, or preparation.]~~
- (3) The pharmacy or retailer shall record, in an electronic log on software provided by the narcotics enforcement division of the department and approved by the administrator:
  - (A) The date of any transaction under paragraph (2);
  - (B) The name, address, and date of birth of the person;
  - (C) The type of identification provided by the individual obtaining the substance;
  - (D) The agency issuing the identification used; and
  - (E) The name of the compound, mixture, or preparation, and the amount; and
- (4) The pharmacy or retailer shall:
  - (A) Record the information required under paragraph (3) on an electronic worksheet on software provided by the narcotics enforcement division of the department; and
  - (B) Electronically mail the worksheet record to the narcotics enforcement division once a month.

The information shall be retained by the pharmacy or retailer for a period of two years. The electronic log shall be capable of being checked for compliance against all state and federal laws, including interfacing with other states to ensure comprehensive compliance, and shall be subject to random and warrantless inspection by county or state law enforcement officers.

(b) No person shall knowingly purchase, possess, receive, or otherwise acquire more than nine grams of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine or its salts, isomers, or salts of optical isomers within a thirty-day period, except that this limit shall not apply to any quantity of such product, mixture, or preparation dispensed pursuant to a valid prescription.

~~[(b) The sales restriction in this section, as it applies to products, mixtures, or preparations containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, shall not apply to any products, mixtures, or preparations that are in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient.]~~

(c) Any person who violates subsection (b) is guilty of a class C felony.

~~[(e)]~~ (d) The department, by rule, may exempt other products from this section, if the administrator finds that the products are not used in the illegal manufacture of methamphetamine or other controlled substances. A manufacturer of a drug product may apply for removal of the product from this section if the product is determined by the administrator to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

~~[(d)]~~ (e) Notwithstanding any other provision of this chapter to the contrary, every wholesaler shall report to the administrator all sales made to any retailer, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, as the only active ingredient or in combination with other active ingredients. The department shall provide a

common reporting form that contains at least the following information about the product, mixture, or preparation:

- (1) Generic or other name;
- (2) Quantity sold;
- (3) Date of sale;
- (4) Name and address of the wholesaler; and
- (5) Name and address of the retailer.

(f) Intentional or knowing failure of a retailer or pharmacy to transmit any information as required by this section shall be a misdemeanor and shall result in the immediate suspension of that retailer's ability to sell any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers as the only active ingredient or in combination with other active ingredients until authorized by the administrator."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008; provided that a pharmacy or retailer shall have until January 1, 2010, to establish the electronic log using software provided by the narcotics enforcement division of the department of public safety required under this Act.

(Approved June 17, 2008.)

## ACT 185

H.B. NO. 1153

A Bill for an Act Relating to Precursors to the Manufacture of Controlled Substances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 329-70, Hawaii Revised Statutes, is amended to read as follows:

**"[§329-70] Forfeiture.** (a) Precursor chemicals that are possessed, transferred, sold, or offered for sale in violation of this part shall be subject to seizure and forfeiture as provided in chapter 712A.

(b) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use, to transport or in any manner facilitate the transportation of precursor chemicals for a purpose that would constitute a violation of section 329-65(c) or (d), shall be subject to seizure and forfeiture as provided in chapter 712A.

(c) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any of the substances listed in section 329-61 that facilitate any violation of section 329-65(c) or (d), and all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of section 329-65(c) or (d), shall be subject to seizure and forfeiture as provided in chapter 712A."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved June 17, 2008.)

ACT 186

S.B. NO. 1487

A Bill for an Act Relating to Controlled Substances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 329, Hawaii Revised Statutes, is amended by adding two new sections to part IV to be appropriately designated and to read as follows:

**“§329- Administrative penalties.** (a) Any person who violates this chapter or any rule adopted by the department pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Any action taken to collect the penalty provided for in this subsection shall be considered a civil action and the fine shall be deposited into the state general fund.

(b) The director may impose by order the administrative penalty specified in this section, in addition to any other administrative or judicial remedy provided by this part, or by rules adopted pursuant to this chapter. Factors to be considered in imposing the administrative penalty include:

- (1) The nature and history of the violation;
- (2) Any prior violation; and
- (3) The opportunity, difficulty, and history of corrective action.

For any judicial proceeding to recover the administrative penalty imposed, the administrator need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and the penalty remains unpaid.

**§329- Injunctive relief.** The administrator may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter or any rule adopted to implement this chapter. The court shall have powers to grant relief in accordance with the Hawaii rules of civil procedure.”

SECTION 2. Section 329-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Designated member of the health care team” includes physician assistants, advanced practice registered nurses, and covering physicians who are authorized under state law to prescribe drugs.

“Physician-patient relationship” means the collaborative relationship between physicians and their patients. To establish this relationship, the treating physician or the physician’s designated member of the health care team, at a minimum shall:

- (1) Personally perform a face-to-face history and physical examination of the patient that is appropriate to the specialty training and experience of the physician or the designated member of the physician’s health care team, make a diagnosis and formulate a therapeutic plan, or personally treat a specific injury or condition;
- (2) Discuss with the patient the diagnosis or treatment, including the benefits of other treatment options; and
- (3) Ensure the availability of appropriate follow-up care.”

SECTION 3. Section 329-18, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;
- (2) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;
- (3) Any substance that contains any quantity of a derivative of barbituric acid or any salt thereof, including the substance butalbital;
- (4) Chlorhexadolo;
- (5) Embutramide (Tributame);
- ~~[(5)]~~ (6) Ketamine, its salts, isomers, and salts of isomers, also known as (+ or -)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;
- ~~[(6)]~~ (7) Lysergic acid;
- ~~[(7)]~~ (8) Lysergic acid amide;
- ~~[(8)]~~ (9) Methyprylon;
- ~~[(9)]~~ (10) Sulfondiethylmethane;
- ~~[(10)]~~ (11) Sulfonethylmethane;
- ~~[(11)]~~ (12) Sulfonmethane;
- ~~[(12)]~~ (13) Tiletamine/Zolazepam (Telazol, 2-(ethylamino)-2-(thienyl)-cyclohexanone, flupyrazapon) or any salts thereof; and
- ~~[(13)]~~ (14) Gamma hydroxybutyric acid and its salts, isomers, and salts of isomers that are contained in a drug product for which an application has been approved under section 505 of the federal Food, Drug, and Cosmetic Act.”

SECTION 4. Section 329-38, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (g) to read:

“(g) Prescriptions for controlled substances shall be issued only as follows:

- (1) All prescriptions for controlled substances shall originate from within the [State] state and be dated as of, and signed on, the day when the prescriptions were issued and shall contain:
  - (A) The first and last name and address of the patient; and
  - (B) The drug name, strength, dosage form, quantity prescribed, and directions for use. Where a prescription is for gamma hydroxybutyric acid, methadone, or buprenorphine, the practitioner shall record as part of the directions for use, the medical need of the patient for the prescription.

The controlled substance prescriptions shall be no larger than eight and one-half inches by eleven inches and no smaller than three inches by four inches. A practitioner may sign a prescription in the same manner as the practitioner would sign a check or legal document (e.g., J.H. Smith or John H. Smith) and shall use both words and figures (e.g., alphabetically and numerically as indications of quantity, such as five (5)), to indicate the amount of controlled substance to be dispensed. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typed, shall be manually signed by the practitioner, and shall include the name, address, telephone number, and registration number of the practitioner. The prescriptions may be pre-

pared by a secretary or agent for the signature of the practitioner, but the prescribing practitioner shall be responsible in case the prescription does not conform in all essential respects to this chapter and any rules adopted pursuant to this chapter. In receiving an oral prescription from a practitioner, a pharmacist shall promptly reduce the oral prescription to writing, which shall include the following information: the drug name, strength, dosage form, quantity prescribed in figures only, and directions for use; the date the oral prescription was received; the full name, DEA registration number, and oral code number of the practitioner; and the name and address of the person for whom the controlled substance was prescribed or the name of the owner of the animal for which the controlled substance was prescribed.

A corresponding liability shall rest upon a pharmacist who fills a prescription not prepared in the form prescribed by this section. A pharmacist may add a patient's missing address or change a patient's address on all controlled substance prescriptions after verifying the patient's identification and noting the identification number on the back of the prescription. The pharmacist shall not make changes to the patient's name, the controlled substance being prescribed, the quantity of the prescription, the practitioner's DEA number, or the practitioner's signature;

- (2) An intern, resident, or foreign-trained physician, or a physician on the staff of a Department of Veterans Affairs facility or other facility serving veterans, exempted from registration under this chapter, shall include on all prescriptions issued by the physician:
  - (A) The registration number of the hospital or other institution; and
  - (B) The special internal code number assigned to the physician by the hospital or other institution in lieu of the registration number of the practitioner required by this section.

The hospital or other institution shall forward a copy of this special internal code number list to the department as often as necessary to update the department with any additions or deletions. Failure to comply with this paragraph shall result in the suspension of that facility's privilege to fill controlled substance prescriptions at pharmacies outside of the hospital or other institution. Each written prescription shall have the name of the physician stamped, typed, or hand-printed on it, as well as the signature of the physician;

- (3) An official exempted from registration shall include on all prescriptions issued by the official:
  - (A) The official's branch of service or agency (e.g., "U.S. Army" or "Public Health Service"); and
  - (B) The official's service identification number, in lieu of the registration number of the practitioner required by this section. The service identification number for a Public Health Service employee shall be the employee's social security or other government issued identification number.

Each prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer; and

- (4) A physician assistant registered to prescribe controlled substances under the authorization of a supervising physician shall include on all controlled substance prescriptions issued:
  - (A) The DEA registration number of the supervising physician; and
  - (B) The DEA registration number of the physician assistant.

Each written controlled substance prescription issued shall include the printed, stamped, typed, or hand-printed name, address, and phone

number of both the supervising physician and physician assistant, and shall be signed by the physician assistant. The medical record of each written controlled substance prescription issued by a physician assistant shall be reviewed and initialed by the physician assistant's supervising physician within seven working days."

2. By amending subsections (j), (k), (l), and (m) to read as follows:

"(j) A prescription for a schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy by facsimile equipment; provided that the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in ~~[subsection]~~ subsections (k), (l), ~~[or]~~ and (m). The original prescription shall be maintained in accordance with section 329-36. A prescription for a schedule III, IV, or V controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy by facsimile; provided that:

- (1) The information shall be communicated only between the prescribing practitioner or the prescriber's authorized agent and the pharmacy of the patient's choice~~;~~. The original prescription shall be maintained by the practitioner in accordance with section 329-36;
- (2) The information shall be communicated in a retrievable, recognizable format acceptable to the intended recipient and shall include the physician's oral code designation and the name of the recipient pharmacy;
- (3) No electronic system, software, or other intervening mechanism or party shall alter the practitioner's prescription, order entry, selection, or intended selection without the practitioner's approval on a per prescription per order basis. Facsimile prescription information shall not be altered by any system, software, or other intervening mechanism or party prior to receipt by the intended pharmacy;
- (4) The prescription information processing system shall provide for confidentiality safeguards required by federal or state law; and
- (5) Prescribing practitioners and pharmacists shall exercise prudent and professional judgment regarding the accuracy, validity, and authenticity of any facsimile prescription information. The facsimile shall serve as the original written prescription for purposes of this section and shall be maintained in accordance with section 329-36.

(k) A prescription prepared in accordance with subsection (g) written for a narcotic listed in schedule II to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion, but does not extend to the dispensing of oral dosage units of controlled substances, may be transmitted by the practitioner or the practitioner's agent to the pharmacy by facsimile. The original prescription shall be maintained by the practitioner in accordance with section 329-36. The pharmacist shall note on the face of the facsimile prescription in red ink "Home Infusion/IV" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36.

(l) A prescription prepared in accordance with subsection (g) written for a schedule II substance for a patient enrolled in a hospice care program certified or paid for by medicare under Title XVIII or a hospice program that is licensed by the State may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The original prescription shall be maintained by the practitioner in accordance with section 329-36. The practitioner or practitioner's agent shall note on the prescription that the patient is a hospice patient. The pharmacist shall note on the face of the facsimile prescription in red ink "HOSPICE" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36.



(m) A prescription prepared in accordance with subsection (g) written for a schedule II controlled substance for a resident of a state-licensed long-term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The original prescription shall be maintained by the practitioner in accordance with section 329-36. The pharmacist shall note on the face of the facsimile prescription in red ink "LTCF" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36."

SECTION 5. Section 329-41, Hawaii Revised Statutes, is amended to read as follows:

**"§329-41 Prohibited acts B—penalties.** (a) It is unlawful for any person:

- (1) Who is subject to part III to distribute, administer, prescribe, or dispense a controlled substance in violation of section 329-38[;] or rules authorized under section 329-31; however, a licensed manufacturer or wholesaler may sell or dispense a controlled substance to a master of a transpacific ship or a person in charge of a transpacific aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft when not in port; provided schedule I or II controlled substances shall be sold to the master of such ship or person in charge of such aircraft only in accordance with the provisions set forth in 21 Code of Federal Regulations, Sections 1301, 1305, and 1307, adopted pursuant to Title 21, United States Code, Section 821;
- (2) Who is a registrant to manufacture a controlled substance not authorized by the registrant's registration or to distribute or dispense a controlled substance not authorized by the registrant's registration to another registrant or another authorized person;
- (3) To refuse or fail to make available, keep, or furnish any record, notification, order form, prescription, statement, invoice, or information in patient charts relating to the administration, dispensing, or prescribing of controlled substances;
- (4) To refuse any lawful entry into any premises for any inspection authorized by this chapter;
- (5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter or chapter 712, part IV; [ø]
- (6) Who is a practitioner or pharmacist to dispense a controlled substance to any individual not known to the practitioner or pharmacist, without first obtaining proper identification and documenting, by signature on a log book kept by the practitioner or pharmacist, the identity of and the type of identification presented by the individual obtaining the controlled substance. If the individual does not have any form of proper identification, the pharmacist shall verify the validity of the prescription and identity of the patient with the prescriber, or their authorized agent, before dispensing the controlled substance. For the purpose of this section, "proper identification" means government-issued identification containing the photograph, printed name, and signature of the individual obtaining the controlled substance[-];
- (7) Who is a practitioner to predate or pre-sign prescriptions to facilitate the obtaining or attempted obtaining of controlled substances; or

(8) Who is a practitioner to facilitate the issuance or distribution of a written prescription or to issue an oral prescription for a controlled substance when not physically in the State.

(b) It shall be unlawful for any person subject to part III of this chapter except a pharmacist, to administer, prescribe, or dispense any controlled substance without a bona fide physician-patient relationship.

[(b)] (c) Any person who violates this section is guilty of a class C felony.”

SECTION 6. Section 329-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It is unlawful for any person knowingly or intentionally:

- (1) To distribute as a registrant a controlled substance classified in schedule I or II, except pursuant to an order form as required by section 329-37;
- (2) To use in the course of the manufacture [ø], distribution, administration, or prescribing of a controlled substance a registration number that is fictitious, revoked, suspended, expired, or issued to another person;
- (3) To obtain or attempt to obtain any controlled substance or procure or attempt to procure the administration of any controlled substance:
  - (A) By fraud, deceit, misrepresentation, embezzlement, theft;
  - (B) By the forgery or alteration of a prescription or of any written order;
  - (C) By furnishing fraudulent medical information or the concealment of a material fact;
  - (D) By the use of a false name, patient identification number, or the giving of false address;
  - (E) By the unauthorized use of a physician’s oral call-in number; or
  - (F) By the alteration of a prescription by the addition of future refills;
- (4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;
- (5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;
- (6) To misapply or divert to the person’s own use or other unauthorized or illegal use or to take, make away with, or secrete, with intent to misapply or divert to the person’s own use or other unauthorized or illegal use, any controlled substance that shall have come into the person’s possession or under the person’s care as a registrant or as an employee of a registrant who is authorized to possess controlled substances or has access to controlled substances by virtue of the person’s employment; or
- (7) To make, distribute, possess, or sell any prescription form, whether blank, faxed, computer generated, photocopied, or reproduced in any other manner without the authorization of the licensed practitioner.”

SECTION 7. Section 329-101, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Intentional or knowing failure to transmit any information as required by this section shall be a misdemeanor[-] and shall result in the immediate suspension

of that pharmacy or practitioner’s ability to dispense controlled substance in the state until authorized by the administrator.”

SECTION 8. Section 329-102, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) All prescriptions for [~~schedule~~] controlled substances in schedules II through V and other controlled substances designated by the designated state agency that are processed by an out-of-state pharmacy shall conform to reporting and registration requirements adopted by the State, and to any additional rules the department adopts.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect on July 1, 2008.

(Approved June 17, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 187**

S.B. NO. 2652

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 89C, Hawaii Revised Statutes, provides appropriate authorities, including the board of education, sufficient flexibility to adjust the wages, hours, benefits, and other terms and conditions of employment for employees who are excluded from collective bargaining. Under the law, these appropriate authorities cannot adjust the wages and other benefits that are set by statute.

Within the department of education, substitute teachers are part-time, casual, and intermittent employees who are excluded from collective bargaining.

The purpose of this Act is to provide for periodic wage adjustments for substitute teachers that are comparable to the wage adjustments negotiated for teachers in bargaining unit (5) and to enable the board of education to adjust the hours, benefits, and other terms and conditions of employment for substitute teachers.

SECTION 2. Section 302A-624, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-624 Teachers’ salary schedule.** (a) The salary schedule for all teachers of the department [~~of education~~] shall be negotiated pursuant to section 89-9.

- (b) All teachers [~~must~~] shall meet the following requirements:
  - (1) A teacher [~~must~~] shall earn at least five credits within a three-year cycle [~~in order~~] to receive increment or longevity step increases in the third year of the three-year cycle;
  - (2) A teacher who fails to meet the requirement set forth in paragraph (1) shall not be eligible for any increment or longevity step increases until the teacher earns the credit requirement for the three-year cycle;

- (3) Any credit earned in excess of any three-year credit requirement may not be carried over beyond the three-year cycle; and
- (4) Credits earned ~~can~~ may be in the form of in-service, university, or other credits approved by the department.
- (c) A teacher ~~is~~ shall be required to spend at least one year in Class III before going on to Class IV, at least one year in Class IV before going on to Class V, at least one year in Class V before going on to Class VI, and at least one year in Class VI before going on to Class VII.
- (d) In case of promotion from a teaching position to an educational officer, the employee shall receive compensation at the lowest step of the higher grade that exceeds the employee's existing compensation by at least eight per cent if such a step exists.
- (e) Effective July 1, 2006, the minimum hourly or minimum per diem rate for substitute teachers shall be determined by the legislature as follows; provided that any individual in class I, II, or III who works less than a full seven-hour work day shall be compensated on a pro-rated, hourly basis:
- (1) Class I: other individuals who do not possess a bachelor's degree shall be compensated at a rate of not less than \$125 for a full work day;
  - (2) Class II: individuals with a bachelor's degree shall be compensated at a rate of not less than \$136 for a full work day; and
  - (3) Class III: department of education teachers, or licensed or highly qualified teachers, shall be compensated at a rate of not less than \$147 for a full work day.
- (f) Effective July 1, 2008, the board shall provide wage adjustments for substitute teachers. The wage adjustments shall be comparable to the across-the-board wage adjustments for teachers that are negotiated for bargaining unit (5) subject to legislative approval, pursuant to section 89C-5. The board may also adjust hours, benefits, and other terms and conditions of employment for substitute teachers."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved June 18, 2008.)

## ACT 188

H.B. NO. 2978

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the University of Hawaii is accountable to the legislature and should be accountable for its funds in a manner that is consistent across the campuses and understandable by the legislature and the public. This situation necessitates that the goals of the system's strategic plan be stated in measurable terms that relate to fiscal allocations. The overall purpose of this Act is to delineate a budgeting system for the University of Hawaii.

The University of Hawaii has been developing a long-term financial plan pursuant to a request from the legislature under Senate Concurrent Resolution No. 137, adopted in 2007. Additionally, Senate Concurrent Resolution No. 79, adopted in 2007, requested the University of Hawaii to report on the linking of funding for individual campuses and performance goals, which would require the University of

Hawaii to develop a budgeting system that reflects achievements, challenges, and needs.

Presently, the University of Hawaii's operational funding is determined each fiscal biennium based on specific program and personnel requests. In addition, supplemental budget requests are prepared for the second year of each fiscal biennium to address unforeseen issues and funding deficiencies that have arisen after the biennial budget has been approved and funds allocated. State appropriations for the University of Hawaii fluctuate based on current spending needs and state general revenue levels.

As a guide, the University of Hawaii system strategic plan was prepared in 2002 as a means for the university to chart its course through 2010. The strategic plan outlined the University of Hawaii's vision, mission, commitments and core values, and planning imperatives. The plan identified the following key strategic goals for the university as a means of advancing its strategic imperatives, including developing:

- (1) Educational effectiveness and student success;
- (2) A learning, research, and service network;
- (3) A model local, regional, and global university;
- (4) Faculty, staff, students, and their environment; and
- (5) Resources and stewardship.

During fiscal year 2007-2008, the University of Hawaii reexamined its strategic plan to update it for the next eight years. As the only public institution of higher education in the state, the University of Hawaii is largely responsible for helping the state meet its higher education needs, which include:

- (1) Increasing the educational capital of the state;
- (2) Expanding workforce development initiatives;
- (3) Assisting in diversifying the economy; and
- (4) Addressing underserved regions and populations of the state, particularly native Hawaiians.

These goals are being incorporated into the strategic plan that will guide the university through 2015.

The next step is to develop a financial plan to reach the strategic goals. The objective is to develop an educational compact that would define the long-term goals to address Hawaii's major economic challenges and align the University of Hawaii with the achievement of these goals. The university would be accountable for meeting performance standards, and the higher education compact would be used to clearly link funding for the university with specific goals and performance measures.

Developing the educational compact requires delineating a financial plan that would link the strategic plan goals to accompanying funding. Thus, there will be a long-term component to the financial plan that indicates the long-term costs of achieving the strategic goals and provides long-term funding targets for each institution within the University of Hawaii system. There will also be a medium-term component to the financial plan that will cover three biennial periods, starting with the 2009-2011 biennial budget and extending to 2015 to cover the same period as the strategic plan. The financial plan will outline the financial costs to achieve the strategic plan and will be based on measurable goals.

The long-term component will include the following:

- (1) Base operating funds—the ongoing fiscal obligations that need to be adjusted for inflation and obligations, such as collective bargaining;
- (2) Capital improvement funding—annual and deferred maintenance obligations; and
- (3) Incentive and performance outcome funding—funds provided as a result of achieving specific performance goals.

The purpose of this Act is to require the University of Hawaii to develop an incentive and performance outcome funding component for the long-range financial plan. This requirement shall attempt to accomplish the following:

- (1) Increasing legislative and public support for higher education;
- (2) Allocating funds through a dual approach of incentives and performance-based funding;
- (3) Monitoring the general condition of the University of Hawaii system;
- (4) Identifying potential sources of problems or areas for improvement;
- (5) Improving the effectiveness and efficiency of colleges and universities within the University of Hawaii system;
- (6) Focusing program, department, college, and university efforts on state priorities and goals;
- (7) Assessing progress on state priorities and goals to improve graduate and undergraduate education; and
- (8) Improving consumer information on higher education.

This Act also establishes a task force in the University of Hawaii to assist in developing a budgetary system that includes an equitable, consistent, and responsive funding formula for the distribution of fiscal resources to the various campuses.

SECTION 2. (a) The University of Hawaii shall prepare and provide to the legislature an annual incentive and performance report and plan in November of each year beginning in 2008. A major purpose of the annual incentive and performance report and plan is to assist the legislature in appropriating up to two per cent of the University of Hawaii's annual budget to facilitate the university's strategic plan and related state goals.

(b) The 2008 incentive and performance report and plan shall present University of Hawaii and state workforce quantitative information that form the baseline data for future comparisons. The university shall include at least the following baseline data for the past five years by program, department, campus, and university:

- (1) The number of full-time equivalent students;
- (2) The number of students who have transferred to other institutions of higher education within the University of Hawaii system;
- (3) The number of students who have graduated;
- (4) The number of full-time equivalent faculty;
- (5) The number of openings in major workforce shortage areas, including but not limited to teaching, nursing, and technology, as data are available through the department of labor and industrial relations or similar sources; and
- (6) The number of graduates filling job openings in major workforce shortage areas, as data are available.

The report shall also include a project plan of the same data for the upcoming five years.

(c) Beginning in 2009, the incentive and performance report and plan shall continue to provide the quantitative data, as well as a qualitative data analysis of the success of the endeavors to enroll, transfer, and graduate students and how this objective is matching the university's strategic plan and the state's workforce needs. The allocation of up to two per cent of incentive and performance funds shall be based on these results.

(d) The University of Hawaii shall include within its strategic plan measurable goals and performance data.

(e) The University of Hawaii shall collect and maintain benchmark data in keeping with section 304A-2001, Hawaii Revised Statutes.

(f) The annual incentive and performance report shall describe the success of previous incentive and performance plans by analyzing the outcome performance measures in relation to plan goals. The report shall also propose the following year's incentive and performance plan, including identifying the goals, performance outcome measures, and sources of funding, which may include new general fund appropriations, reallocated existing general fund appropriations, and other sources of funding available to the university. Data appropriate to the individual performance measure shall be provided in the annual report.

SECTION 3. (a) There is established in the University of Hawaii a task force to assist the University of Hawaii in developing a budgetary system that includes an equitable, consistent, and responsive funding formula for the distribution of fiscal resources to the various University of Hawaii campuses. The funding formula shall:

- (1) Be linked to the enrollment of full-time equivalent (FTE) students at each campus;
  - (2) Assign different weights in recognition of the varying costs and revenues relating to educating different categories of students, such as:
    - (A) The different classifications of students, including two-year, undergraduate, graduate, and professional-program students, and resident and nonresident students;
    - (B) Students who are enrolled in programs that address the major workforce needs of the state, including teacher education; nursing; and the science, technology, engineering, and math disciplines; and
    - (C) Students with special support needs, including those from underserved populations or who are at-risk, because they are subject to language, cultural, economic, or other disadvantages due to their home and community environment;
  - (3) Include an incentive and performance component that recognizes the unique goals and missions of the University of Hawaii's various campuses, as well as the higher education needs of the state;
  - (4) Be as simple and transparent as possible and be designed to allow the funding formula to be used as a basis for planning; and
  - (5) Provide for transparency and accountability to ensure the efficient use of state resources.
- (b) The members of the task force shall consist of six members as follows:
- (1) The chancellor of the University of Hawaii at Manoa or the chancellor's designee;
  - (2) The chancellor of the University of Hawaii at Hilo or the chancellor's designee;
  - (3) The chancellor of the University of Hawaii at West Oahu or the chancellor's designee;
  - (4) The vice president or interim vice president of the University of Hawaii community colleges or the vice president's or interim vice president's designee;
  - (5) One member appointed by the president of the senate; and
  - (6) One member appointed by the speaker of the house of representatives.
- (c) The task force shall select a chairperson by a majority vote of its members.

A majority of the members of the task force shall constitute a quorum to conduct business. The concurrence of the majority of the members of the task force shall be necessary to make any action of the task force valid.

(d) The task force shall be exempt from chapter 92, Hawaii Revised Statutes; provided that the task force shall make a good faith effort to make its proceedings and

work products accessible and available to the general public in a manner consistent with the intent of chapter 92, Hawaii Revised Statutes.

(e) The chief financial officer for the University of Hawaii system, or the chief financial officer's designee, shall serve as the liaison between the task force and the president of the University of Hawaii.

(f) The University of Hawaii shall hire, as a consultant, an independent higher education finance expert to work with the task force to develop the funding formula. The consultant shall have experience working with policymakers in other states to develop or improve funding models, including funding formulas, to allocate public funds to campuses within the respective state's higher education system.

The task force shall provide the consultant with the data necessary to develop the funding formula, including data relating to historical enrollment growth, future enrollment projections, estimated costs of educating different categories of students, and performance incentives and goals for each of the various campuses.

(g) The task force shall submit to the president of the University of Hawaii, for the president's approval, a report of its progress, and any findings and recommendations, including those of the consultant, to include:

- (1) Information as to how full-time equivalent enrollment, historical enrollment growth, future enrollment growth, enrollment mix, and similar factors should be linked to funding, through formula funding, base funding, incentive funding, or any other methodology;
- (2) The consultant's analysis and expert opinion as to the methodology to be employed and as to whether campuses are underfunded or overfunded, based upon past enrollment growth, current enrollment, enrollment mix, funding, and other factors;
- (3) The consultant's recommendations as to the amount of adjustments to the campus base budgets that are needed to compensate for shortfalls in prior years and how those adjustments should be accomplished; and
- (4) A target date for the completion of a funding formula together with any proposed legislation to establish and implement the funding formula.

If approved by the president, the University of Hawaii shall submit this report to the legislature no later than twenty days prior to the convening of the regular session of 2009.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved June 18, 2008.)

## ACT 189

S.B. NO. 2876

A Bill for an Act Relating to Employment Security.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. There is appropriated from the unemployment trust fund from moneys deposited pursuant to section 383-123(b), Hawaii Revised Statutes, the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 to be allocated to the Hawaii county workforce investment board, which shall work in collaboration with the county of Hawaii to improve employer outreach and services, labor force pool expansion, capacity building, and to fund some shared costs for the operations of the one-stop career center; provided that the Hawaii county workforce investment board may use a portion of the sum allocated by this Act to compensate the department of labor and industrial relations for administrative expenses to include the cost of providing oversight, monitoring, and reporting; provided further that the compensation for the administrative expenses by the department of labor and



industrial relations shall be negotiated between the department of labor and industrial relations and the Hawaii county workforce investment board.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act; provided that the Hawaii county workforce investment board shall be required to submit a workforce development plan that shall be approved by the workforce development council prior to the release of funds for the Hawaii county workforce investment board by the department of labor and industrial relations.

SECTION 2. There is appropriated from the unemployment trust fund from moneys deposited pursuant to section 383-123(b), Hawaii Revised Statutes, the sum of \$1,508,487 or so much thereof as may be necessary for fiscal year 2008-2009 to be allocated to the Maui county workforce investment board, which shall work in collaboration with the county of Maui, particularly with regards to the unemployment stemming from the Molokai Ranch closing.

The sum appropriated shall be expended by the department of labor and industrial relations of for<sup>1</sup> the purposes of this Act.

SECTION 3. There is appropriated from the unemployment trust fund from moneys deposited pursuant to section 383-123(b), Hawaii Revised Statutes, the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 to be allocated to the workforce development division of the department of labor and industrial relations to assist workers dislocated by company closures and lay-offs; assist employers in finding suitable workers; and improve the delivery of services as allowed under the Wagner-Peyser Act.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 4. The appropriations made by this Act shall not lapse at the end of the fiscal year for which the appropriation is made; provided further that all moneys appropriated by this Act shall lapse on June 30, 2010.

SECTION 5. This Act shall take effect on July 1, 2008.

(Approved June 18, 2008.)

**Note**

1. So in original.

**ACT 190**

S.B. NO. 3023

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding two new parts to article 19 to be appropriately designated and to read as follows:

**“PART II. SPECIAL PURPOSE FINANCIAL CAPTIVE  
INSURANCE COMPANIES**

**§431:19-A Purpose.** This part provides for the creation of special purpose financial captive insurance companies for the exclusive purpose of facilitating the

securitization of one or more risks as a means of accessing alternative sources of capital and achieving the benefits of securitization. This part intends to allow the organizers of special purpose financial captive insurance companies to achieve greater efficiencies in structuring and executing insurance securitization, to diversify and broaden access to sources of capital, to facilitate access to insurance securitization and capital markets financing technology, and to further the economic development opportunities of the State.

**§431:19-B Applicable law.** (a) A special purpose financial captive insurance company shall be subject to the provisions of this part and to part I. If there is any conflict between this part and part I, this part shall control.

(b) A special purpose financial captive insurance company shall be subject to all applicable rules adopted pursuant to section 431:19-114 that are in effect as of the effective date of this part and that are adopted after the effective date of this part.

(c) The commissioner, by order, may exempt a special purpose financial captive insurance company from any provision of this article or from any rule adopted pursuant to section 431:19-114 if the commissioner determines the provision to be inappropriate, given the nature of risks to be insured by the special purpose financial captive insurance company or its approved plan of operation, and that the public interest is being served or protected, and that reasonable expectations of the policyholders and consumers will be maintained.

(d) Nothing in this part shall be construed to affect chapter 485A in any manner.

**§431:19-C Definitions.** For purposes of this part:

“Counterparty” means the insurer that cedes risk to a special purpose financial captive insurance company which, unless otherwise approved by the commissioner, shall be the parent or an affiliated company of the special purpose financial captive insurance company.

“Insolvency” or “insolvent,” for the purpose of applying the provisions of article 15 to a special purpose financial captive insurance company, means:

- (1) That the special purpose financial captive insurance company is unable to pay its obligations when due, unless those obligations are the subject of a bona fide dispute; or
- (2) That the special purpose financial captive insurance company has failed to meet all the criteria and conditions for solvency of the special purpose financial captive insurance company established by the commissioner by rule or order.

“Insurance securitization” and “securitization” mean a transaction or a group of related transactions, which may include capital market offerings, that are effected through related risk transfer instruments and facilitating administrative agreements, where all or part of the result of the transactions is used to fund the special purpose financial captive insurance company’s obligations to the counterparty under the special purpose financial captive insurance company contract in accordance with the terms of the transaction, and by which:

- (1) Proceeds are obtained by a special purpose financial captive insurance company, directly or indirectly, through the issuance of securities by the special purpose financial captive insurance company or any person; or
- (2) A person provides one or more letters of credit or other assets for the benefit of the special purpose financial captive insurance company that the commissioner authorizes the special purpose financial captive insurance company to treat as admitted assets for the purposes of the special purpose financial captive insurance company’s annual report and where all or any part of the proceeds, letters of credit, or assets, as applicable,

are used to fund the special purpose financial captive insurance company's obligations under the special purpose financial captive insurance company contract with a counterparty.

The terms "insurance securitization" and "securitization" do not include the issuance of a letter of credit for the benefit of the commissioner to satisfy all or part of the special purpose financial captive insurance company's capital and surplus requirements under section 431:19-104.

"Management" means the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the special purpose financial captive insurance company, including but not limited to officers or agents elected or appointed to act on behalf of the special purpose financial captive insurance company.

"Organizational document" means the special purpose financial captive insurance company's articles of incorporation, articles of organization, bylaws, operating agreement, or any other document that establishes the special purpose financial captive insurance company as a legal entity or prescribes its existence.

"Special purpose financial captive insurance company" means a captive insurance company that has received a certificate of authority from the commissioner to operate as a special purpose financial captive insurance company pursuant to this part.

"Special purpose financial captive insurance company contract" means a contract between the special purpose financial captive insurance company and the counterparty pursuant to which the special purpose financial captive insurance company agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business.

"Special purpose financial captive insurance company security" means a security defined in section 485A-102, and shall also include any other form of debt obligation, equity, surplus certificate, surplus note, funding agreement, derivative, or other financial instrument that the commissioner designates, by rule or order, as a security, and that is issued by a special purpose financial captive insurance company, or a third party, where the proceeds from the security are obtained directly or indirectly by a special purpose financial captive insurance company.

"Surplus note" means an unsecured subordinated debt obligation possessing characteristics consistent with paragraph 3 of the National Association of Insurance Commissioners Statement of Statutory Accounting Principles No. 41, as amended from time to time by the National Association of Insurance Commissioners, and as modified or supplemented by rule or order of the commissioner.

**§431:19-D Certificate of authority.** (a) Any special purpose financial captive insurance company, when permitted by its organizational documents, may apply to the commissioner for a certificate of authority to transact insurance or reinsurance business as authorized in this part. A special purpose financial captive insurance company may only insure or reinsure the risks of its counterparty. Notwithstanding any other provision of this part, a special purpose financial captive insurance company may purchase reinsurance to cede the risks assumed under the special purpose financial captive insurance contracts, subject to the prior approval of the commissioner.

(b) In conjunction with the issuance of a certificate of authority to a special purpose financial captive insurance company, the commissioner may issue an order that includes any provisions, terms, and conditions regarding the organization, licensing, and operation of the special purpose financial captive insurance company that are deemed appropriate by the commissioner and that are not inconsistent with this part. Except as provided in sections 431:19-L and 431:19-M, a certificate of authority issued to a special purpose financial captive insurance company pursuant to this part shall not be revoked, suspended, amended, or modified other than as follows:

- (1) The special purpose financial captive insurance company consents to the revocation, suspension, amendment, or modification; or
  - (2) The commissioner makes a showing of clear and convincing evidence demonstrating that the revocation, suspension, amendment, or modification is necessary to avoid irreparable harm to the special purpose financial captive insurance company, investors who hold special purpose financial captive insurance company securities, the public, or a counterparty, if applicable.
- (c) To qualify for a certificate of authority, a special purpose financial captive insurance company shall be subject, in addition to the requirements of section 431:19-102, to the following:
- (1) The special purpose financial captive insurance company shall submit its plan of operation to the commissioner for approval. The plan of operation shall include:
    - (A) Draft documentation or, at the discretion of the commissioner, a written summary, of all agreements and material transactions, including but not limited to the name of the counterparty, the nature of risk being assumed, and the nature and purpose of the interrelationships between the various transactions that are entered into to effectuate the special purpose financial captive insurance company contract and the insurance securitization;
    - (B) The source and form of the special purpose financial captive insurance company's initial and ongoing capital and surplus;
    - (C) The proposed strategic investment policy of the special purpose financial captive insurance company;
    - (D) A description of the underwriting, reporting, and claims reserving and payment methods by which losses covered by the special purpose financial captive insurance company are reported, accounted for, and settled; and
    - (E) Projected financial statements of the special purpose financial captive insurance company using an expected and at least one adverse case scenario applied to the special purpose financial captive insurance company contract;
  - (2) The special purpose financial captive insurance company shall submit an affidavit of or a declaration by its president, a vice president, the treasurer, or the chief financial officer, that includes the following statements, to the best of that person's knowledge and belief after reasonable inquiry:
    - (A) That the proposed organization and operation of the special purpose financial captive insurance company complies with all applicable provisions of this part;
    - (B) That the special purpose financial captive insurance company's strategic investment policy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and management of the assets with respect to the risks associated with the special purpose financial captive insurance company contract and the insurance securitization transaction; and
    - (C) That the special purpose financial captive insurance company contract and any arrangement for securing the special purpose financial captive insurance company's obligations under the special purpose financial captive insurance company contract, including but not limited to any agreement or other documentation to implement the arrangement, comply with the provisions of this part;

- (3) The special purpose financial captive insurance company shall submit other documents or statements of the special purpose financial captive insurance company's officer as may be required by the commissioner to evaluate the special purpose financial captive insurance company's application for licensure; and
- (4) The application shall include an opinion of qualified legal counsel, in a form acceptable to the commissioner, that the offer and sale of any special purpose financial captive insurance company securities comply with all applicable registration requirements, or applicable exemptions from or exceptions to the requirements of the federal securities laws and that the offer and sale of securities by the special purpose financial captive insurance company itself comply with all registration requirements or applicable exemptions from or exceptions to the requirements of the security laws of this State. The legal opinions shall not be required as part of the application if the special purpose financial captive insurance company includes a specific statement in its plan of operation that the opinions shall be provided to the commissioner prior to the offer or sale of any special purpose financial captive insurance company securities.
- (d) The commissioner may issue a certificate of authority to transact insurance and reinsurance business as a special purpose financial captive insurance company in this State that shall be valid through the term of the insurance securitization and automatically renewed each April 1 following the date of initial issuance, except as provided for in section 431:19-L, and upon the commissioner's finding that:
  - (1) The proposed plan of operation provides for a reasonable and expected successful operation;
  - (2) The terms of the special purpose financial captive insurance company contract and related transactions comply with this part; and
  - (3) The insurance regulator of the home domicile of each counterparty has notified the commissioner in writing or otherwise provided assurance satisfactory to the commissioner that it has approved or has not disapproved the transaction; provided that the commissioner shall not be precluded from issuing or renewing a certificate of authority<sup>1</sup> the insurance regulator of the home domicile of a counterparty has not responded with respect to all or any part of the transaction.
- (e) Section 431:19-101.2 shall apply to all information submitted pursuant to subsection (c) and to any order issued to the special purpose financial captive insurance company pursuant to subsection (b).

**§431:19-E Changes in plan of operation; voluntary dissolution or cessation of business.** (a) Any change in the special purpose financial captive insurance company's plan of operation shall require the prior approval of the commissioner.

(b) Any transaction or series of transactions shall be subject to the prior approval of the commissioner if the transaction or series of transactions:

- (1) Is undertaken to dissolve a special purpose financial captive insurance company; or
- (2) Results in the termination of all or any part of a special purpose financial captive insurance company's business; provided that no prior approval of the commissioner shall be required for any transaction or series of transactions performed in accordance with a document, contract, or agreement described in the special purpose financial captive insurance company's plan of operation and if the commissioner is notified in advance of the transaction or series of transactions.

(c) A special purpose financial captive insurance company shall notify the commissioner in advance of any change in the legal ownership of any security issued by the special purpose financial captive insurance company.

**§431:19-F Formation.** (a) A special purpose financial captive insurance company may be incorporated as a stock corporation, limited liability company, mutual association, partnership, or other form of organization approved by the commissioner.

(b) A special purpose financial captive insurance company's organizational documents shall limit the special purpose financial captive insurance company's authority to transact the business of insurance or reinsurance to those activities that the special purpose financial captive insurance company conducts to accomplish its purposes as expressed in this part.

**§431:19-G Minimum capital and surplus.** A special purpose financial captive insurance company shall not be issued a license unless it possesses and thereafter maintains unimpaired capital and surplus of not less than \$250,000 in the form of cash or other assets approved by the commissioner.

**§431:19-H Issuance of securities.** (a) A special purpose financial captive insurance company may issue securities, as defined in section 485A-102, subject to and in accordance with its approved plan of operation and its organizational documents.

(b) A special purpose financial captive insurance company, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) A special purpose financial captive insurance company may:

- (1) Subject to the approval of the commissioner, account for the proceeds of surplus notes as surplus; and
- (2) Submit for prior approval of the commissioner, periodic written requests for payments of interest on and repayment of principal surplus notes, and any other debt obligations issued by the special purpose financial captive insurance company; provided that the commissioner may, in lieu of the approval of periodic written requests, approve a formula or plan that provides for the payment of interest, principal, or both.

(d) Securities issued by a special purpose financial captive insurance company pursuant to an insurance securitization shall not be considered to be insurance or reinsurance contracts. An investor in these securities or a holder of these securities, by sole means of this investment or holding, shall not be considered to be transacting the business of insurance in this State. The underwriter's placement or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this part shall not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting business only by virtue of their activities in conjunction with the insurance securitization.

**§431:19-I Authorized contracts and agreements.** (a) A special purpose financial captive insurance company shall insure only the risks of a counterparty and shall not issue a contract for assumption of risk or indemnification of loss other than a special purpose financial captive insurance company contract; provided that the special purpose financial captive insurance company may cede risks assumed through a special purpose financial captive insurance company to third party reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the commissioner.

(b) A special purpose financial captive insurance company may enter into contracts and agreements with affiliated entities and third parties to conduct other activities related or incidental to and necessary to fulfill the purposes of the special purpose financial captive insurance company contract, the insurance securitization, and this part; provided that the contracts and activities are included in the special purpose financial captive insurance company's plan of operation or are otherwise approved in advance by the commissioner. Those contracts, agreements, and activities may include but are not limited to:

- (1) Entering into special purpose financial captive insurance company contracts;
- (2) Issuing of special purpose financial captive insurance company securities;
- (3) Complying with the terms of the special purpose financial captive insurance company contracts or securities;
- (4) Entering into trust, tax, administration, reimbursement, or fiscal agent transactions; or
- (5) Complying with trust indenture, reinsurance or retrocession and other contracts, agreements, and activities necessary or incidental to effectuate an insurance securitization in compliance with the special purpose financial captive insurance company's plan of operation approved by the commissioner or as authorized by this part.

(c) A special purpose financial captive insurance company may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments issued pursuant to a special purpose financial captive insurance company insurance securitization transaction or the obligations of a special purpose financial captive insurance company under a special purpose financial captive insurance company contract.

(d) A special purpose financial captive insurance company shall immediately notify the commissioner of any threatened or pending action by a counterparty or any other person to foreclose or otherwise take possession of or control over or encumber the collateral provided by the special purpose financial captive insurance company and part of the insurance securitization.

(e) Unless otherwise approved in advance by the commissioner, a special purpose financial captive insurance company shall not:

- (1) Issue or otherwise administer primary insurance contracts;
- (2) Enter into a special purpose financial captive insurance company contract with a counterparty that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile;
- (3) Enter into a special purpose financial captive insurance contract that contains any provision for payment by the special purpose financial captive insurance company in discharge of its obligations under the contract to any person other than the counterparty or receiver;
- (4) Have any direct obligation to the policyholders or reinsured of the counterparty; or
- (5) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from anyone convicted of a felony, anyone convicted of a criminal offense involving the conversion or misappropriation of funds, including fiduciary funds or insurance amounts, or theft, deceit, fraud, misrepresentation, embez-

zement, or corruption. Also,<sup>1</sup> anyone whom the commissioner has cause to believe has violated, is violating, or is about to violate any provision of this code, any order of the commissioner, or undertakes or plans to undertake any action that may cause the special purpose financial captive insurance company to be in a condition as to render the continuance of the special purpose financial captive insurance company's business hazardous to the public or to the holders of the special purpose financial captive insurance company contracts or special purpose financial captive insurance company securities.

**§431:19-J Disposition of assets; investments.** (a) The assets of a special purpose financial captive insurance company shall be preserved and administered by or on behalf of the special purpose financial captive insurance company to satisfy the liabilities and obligations of the special purpose financial captive insurance company, the insurance securitization, and other related contracts and agreements.

(b) Unless waived by the commissioner, any security offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other special purpose financial captive insurance company securities shall include a disclosure that all or part of the proceeds of the insurance securitization will be used to fund the special purpose financial captive insurance company's obligations to the counterparty.

(c) A special purpose financial captive insurance company shall not be subject to any restriction on investments; provided that the special purpose financial captive insurance company:

- (1) Maintains compliance with the strategic investment policy adopted by the special purpose financial captive insurance company; and
- (2) Shall not make a loan to any person other than as permitted under its plan of operation or as otherwise approved in advance by the commissioner;

provided further that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the special purpose financial captive insurance company unless the investment is otherwise approved in its plan of operation or in an order issued to the special purpose financial captive insurance company pursuant to section 431:19-B(c).

**§431:19-K Annual reporting; books and records.** (a) For purposes of section 431:19-107(a), the commissioner may require any appropriate or necessary modification or supplemental or additional information to be filed with the required financial statements.

(b) Unless otherwise approved in advance by the commissioner, a special purpose financial captive insurance company shall maintain its books, records, documents, accounts, vouchers, and agreements in this State. A special purpose financial captive insurance company shall make its books, records, documents, accounts, vouchers, and agreements available for inspection by the commissioner at any time. A special purpose financial captive insurance company shall keep its books and records in a manner that its financial condition, affairs, and operations can be readily ascertained and so that the commissioner may readily verify its financial statements and determine its compliance with this part.

(c) Unless otherwise approved in advance by the commissioner, all original books, records, documents, accounts, vouchers, and agreements shall be preserved and kept available in this State for the purpose of examination and inspection and until a time as the commissioner approves the destruction or other disposition of the books, records, documents, accounts, vouchers, and agreements. If the commissioner approves the keeping of the items listed in this subsection outside this State, then



the special purpose financial captive insurance company shall maintain in this State a complete and true copy of each original. Books, records, documents, accounts, vouchers, and agreements may be photographed, reproduced on film, or stored and reproduced electronically.

**§431:19-L Suspension and revocation of certificate of authority.** (a) The commissioner shall notify a special purpose financial captive insurance company not less than thirty days before suspending or revoking its certificate of authority pursuant to section 431:19-109, which notice shall state the basis for the suspension or revocation. The special purpose financial captive insurance company shall be afforded the opportunity for a hearing pursuant to chapter 91.

(b) Notwithstanding subsection (a) and section 91-9.5, the commissioner may cause the immediate suspension or restriction of the special purpose financial captive insurance company's certificate of authority, subject to timely subsequent notice and opportunity for a hearing, upon the commissioner's determination that the failure to take an action may result in the material deterioration of the financial condition or soundness of the special purpose financial captive insurance company, and that for the protection of the public from the possible consequences of practices, the special purpose financial captive insurance company's certificate of authority should be immediately suspended or restricted.

The commissioner may order the summary suspension of the certificate of authority for a period not to exceed the later of thirty days or, if a hearing is requested by the special purpose financial captive insurance company pursuant to chapter 91, the conclusion of the hearing. Any attempt by the special purpose financial captive insurance company to continue its operations while its certificate of authority has been summarily suspended shall be sufficient to warrant a permanent revocation of the certificate of authority and shall subject the special purpose financial captive insurance company to all penalties prescribed by this article, or any rule or order issued by the commissioner.

(c) For purposes of this section, any reference to section 431:19-104 in section 431:19-109(a)(2) shall be construed to also reference section 431:19-G.

**§431:19-M Supervision, rehabilitation, liquidation.** (a) Except as otherwise provided in this part, article 15 shall apply in full to a special purpose financial captive insurance company.

(b) Upon any order of supervision, rehabilitation, or liquidation of a special purpose financial captive insurance company, the receiver shall manage the assets and liabilities of the special purpose financial captive insurance company pursuant to this part.

(c) Amounts recoverable by the receiver of a special purpose financial captive insurance company under a special purpose financial captive insurance company contract shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to a counterparty, notwithstanding any provision in the contracts or other documentations governing the special purpose financial captive insurance company securitization.

(d) Notwithstanding article 15 or any other law of this State:

(1) An application or petition for a temporary restraining order or injunction issued pursuant to article 15 with respect to a counterparty does not prohibit the transaction of business by a special purpose financial captive insurance company, including any payment by a special purpose financial captive insurance company made with respect to a special purpose financial captive insurance company security, or any action or proceeding against a special purpose financial captive insurance company or its assets;

- (2) The commencement of a summary proceeding with respect to a special purpose financial captive insurance company and any order issued by the court in the summary proceeding, unless otherwise specifically addressed in the summary proceeding or order issued by the court, shall not prohibit payments by a special purpose financial captive insurance company and shall not prohibit the special purpose financial captive insurance company from taking any action required to make payments; provided that payments are made:
    - (A) Pursuant to a special purpose financial captive insurance company security or special purpose financial captive insurance company contract; and
    - (B) Consistent with the special purpose financial captive insurance company's plan of operation and any order issued to the special purpose financial captive insurance company pursuant to section 431:19-D(b), as either is amended from time to time;
  - (3) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special purpose financial captive insurance company of money or other property made pursuant to a special purpose financial captive insurance company contract; and
  - (4) A receiver of a special purpose financial captive insurance company may not void a nonfraudulent transfer by the special purpose financial captive insurance company of money or other property:
    - (A) Made to a counterparty pursuant to a special purpose financial captive insurance company contract or made to or for the benefit of any holder of a special purpose financial captive insurance company security with respect to the special purpose financial captive insurance company security; and
    - (B) Made consistent with the special purpose financial captive insurance company's plan of operation and any order issued to the special purpose financial captive insurance company pursuant to section 431:19-D(b), as either is amended from time to time.
- (e) With the exception of the fulfillment of the obligations under a special purpose financial captive insurance contract and notwithstanding any other provision of this part or other laws of this State, the assets of a special purpose financial captive insurance company, including assets held in trust, on a funds-withheld basis, or in any other arrangement to secure the special purpose financial captive insurance company's obligations under a special purpose financial captive insurance company contract, shall not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to this part for any purpose including, without limitation, distribution to creditors of the counterparty.

**§431:19-N Existing licenses.** Except as otherwise determined by the commissioner, a captive insurance company, that has been issued a certificate of authority by the commissioner pursuant to section 431:19-102 as of July 1, 2008, and is engaged in or will be engaged in an insurance securitization, need not obtain a certificate of authority pursuant to section 431:19-D, but shall otherwise be subject to this part as a special purpose financial captive insurance company; provided that the commissioner may require the captive insurance company to take any action that the commissioner determines is reasonably necessary to bring the captive insurance company into compliance with this part; provided further that the commissioner may issue an order described in section 431:19-D(b) with respect to the captive insurance company.

### PART III. SPONSORED CAPTIVE INSURANCE COMPANIES

**§431:19-O Formation.** (a) One or more sponsors may form a sponsored captive insurance company under this part. In addition to the general provisions of this article, the provisions of this part shall apply to sponsored captive insurance companies.

(b) A sponsored captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a non-profit corporation with one or more members, or as a member-managed or manager-managed limited liability company.

**§431:19-P Supplemental application materials.** In addition to the information required in section 431:19-102(c) and (d), each sponsored captive insurance company applicant that segregates the risks of its participants through one or more protected cells shall file with the commissioner the following:

- (1) All contracts or draft contracts between the sponsored captive insurance company and its participants;
- (2) A description of the means by which the assets, liabilities, income, and expenses of each protected cell shall be segregated from those of other protected cells in the sponsored captive insurance company, and reported to the commissioner; and
- (3) A fair and equitable plan for allocating direct and indirect expenses to each protected cell.

**§431:19-Q Protected cells.** A sponsored captive insurance company formed and licensed under this article may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following:

- (1) The shareholders or members of a sponsored captive insurance company shall be limited to its participants and sponsors; provided that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner;
- (2) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors as may be provided in the participant contract or required by the commissioner;
- (3) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;
- (4) No sale, exchange, or other transfer of assets may be made by a sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;
- (5) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval, and in no event shall the approval be given if the sale, exchange, transfer dividend, or distribution would result in insolvency or impairment with respect to a protected cell;
- (6) Each sponsored captive insurance company shall annually file with the commissioner, financial reports as the commissioner shall require, that shall include, without limitation, accounting statements detailing the financial experience of each protected cell;
- (7) Each sponsored captive insurance company shall notify the commissioner in writing within ten business days of any protected cell that is

insolvent or otherwise unable to meet its claim or expense obligations;  
and

- (8) No participant contract shall take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in business plan requiring the commissioner's prior written approval.

**§431:19-R Qualification of sponsors.** A sponsor of a sponsored captive insurance company shall be an insurer licensed under laws of any state, a reinsurer authorized or approved under the laws of any state, a captive insurance company formed or licensed under this article, or any other person, company, or organization approved by the commissioner in the exercise of the commissioner's discretion, after finding that the approval of that person, company, or organization as a sponsor is not inconsistent with the purposes of this article. A risk retention group shall not be either a sponsor or a participant of a sponsored captive insurance company.

**§431:19-S Participants in sponsored captive insurance companies.** (a) Associations, corporations, limited liability companies, partnerships, trusts, and other business entities may be participants in any sponsored captive insurance company formed or licensed under this chapter.

(b) A sponsor of a sponsored captive insurance company may be a participant.

(c) A participant need not be a shareholder or member of the sponsored captive insurance company or any affiliate thereof.

(d) A participant shall insure only its own risks through a sponsored captive insurance company.

**§431:19-T Investments by sponsored captive insurance companies.** Notwithstanding section 431:19-Q, the assets of two or more protected cells may be combined for purposes of investments, and the combination shall not be construed as defeating the segregation of the assets for accounting or other purposes. Sponsored captive insurance companies shall comply with the investment requirements under section 431:19-110.

**§431:19-U Delinquency of sponsored captive insurance companies.** In the case of a sponsored captive insurance company, article 15 shall apply; provided that:

- (1) The assets of a protected cell may not be used to pay any expenses or claims other than those attributable to the protected cells; and
- (2) Its capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company.

**§431:19-V Applicable laws.** A sponsored captive insurance company shall be subject to this part and to part . If there is any conflict between this part and part , this part shall control.

**§431:19-W Existing licenses.** Except as otherwise determined by the commissioner, a captive insurance company that has been issued a certificate of authority by the commissioner pursuant to section 431:19-102 as of July 1, 2008, and is licensed as a Class 4 captive shall not be required to re-apply for a certificate of authority under this part, but shall otherwise be subject to this part as a sponsored captive insurance company; provided that the commissioner may by order require the captive insurance company to take any action that the commissioner determines

is reasonably necessary to bring the captive insurance company into compliance with this part.”

SECTION 2. Chapter 431, article 19, Hawaii Revised Statutes, is amended by designating sections 431:19-101 to 431:19-116 as part I, to read:

**“PART I. GENERAL PROVISIONS”**

SECTION 3. Section 431:19-101, Hawaii Revised Statutes, is amended as follows:

1. By adding five new definitions to be appropriately inserted and to read:

““Participant” means an entity that meets the requirements of section 431:19-S, and any affiliates thereof that are insured by a sponsored captive insurance company where the losses of the participant may be limited through a participant contract to the participant’s pro rata share of the assets of one or more protected cells identified in the participant contract.

“Participant contract” means a contract by which a sponsored captive insurance company insures the risks of a participant and may also limit the losses of each participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.

“Protected cell” means a separate account established by a sponsored captive insurance company formed or licensed under this part in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of the participants as set forth in the participant contracts.

“Sponsor” means any entity that meets the requirements of section 431:19-R and is approved by the commissioner to provide all or part of the minimum required capital and surplus of a sponsored captive insurance company and to organize and operate a sponsored captive insurance company.

“Sponsored captive insurance company” means any captive insurance company in which the minimum required capital and surplus is provided by one or more sponsors and is formed or licensed under this article. A sponsored captive insurance company insures the risks only of its participants through separate participant contracts and may fund its liability to each participant through one or more protected cells. A sponsored captive insurance company segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company’s general account.”

2. By repealing the definitions of “leased capital facility,” “participant,” “participant contract,” “protected cell,” and “sponsor.”

~~[““Leased capital facility” means a limited membership insurance company formed as a class 4 company under this article that insures the risks of its participants.”~~

~~““Participant” means any entity, partners, or joint venture partners, or members within the same corporate family of the entity that are insured by a leased capital facility, where the losses of the participant may be limited through a participant contract to the assets of a protected cell. A sponsor may be a participant.”~~

~~““Participant contract” means a contract by which a leased capital facility insures the risks of a participant and, if the risks are segregated through one or more protected cells, limits the losses of the participant to the assets of a protected cell.”~~

~~““Protected cell” means a separate account established and maintained by a leased capital facility for one participant.”~~

~~““Sponsor” means any entity that is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a leased capital facility.”]~~

SECTION 4. Section 431:19-101.3, Hawaii Revised Statutes, is amended to read as follows:

**“§431:19-101.3 Classes of captive insurance.** Each captive insurance company formed under this article shall be designated and licensed as one of the following classes of captive insurance companies:

- (1) A class 1 company shall be limited to a pure captive insurance company that only writes business as a reinsurer;
- (2) A class 2 company shall be limited to a pure captive insurance company that is not a class 1 company;
- (3) A class 3 company shall be any company formed under this article as an association captive insurance company or a risk retention captive insurance company;
- (4) A class 4 company shall be a ~~leased capital facility~~ sponsored captive insurance company formed under part III of this article; and
- (5) A class 5 company shall be a reinsurance or excess insurance company formed under this article.”

SECTION 5. Section 431:19-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each captive insurance company licensed pursuant to this article shall possess and thereafter maintain unimpaired capital and surplus in the amount established by the commissioner; provided that:

- (1) The commissioner shall take into account the nature and volume of business transacted by each captive insurance company, and any other factors deemed appropriate by the commissioner;
- (2) Class 3 captive insurance companies shall be subject to other applicable provisions of this chapter that may require capital and surplus in excess of those established by the commissioner; and
- (3) Minimum capital and surplus established by the commissioner shall be no less than the following amounts:
  - (A) Class 1: \$100,000;
  - (B) Class 2: \$250,000;
  - (C) Class 3: \$500,000;
  - (D) Class 4: ~~[\$1,000,000;]~~ \$500,000; and
  - (E) Class 5: An amount as determined by the commissioner on a case by case basis.”

SECTION 6. Section 431:19-108, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) ~~[All examination reports conducted by the commissioner, or a designated agent of the commissioner, of any pure captive insurance company shall remain confidential unless the commissioner determines that the pure captive insurance company is in an adverse financial condition and the commissioner reasonably believes that the interest of the public necessitates the opening of the information contained in the examination report for public inspection.]~~ All examination reports, preliminary examination reports or results, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the commissioner from using information in furtherance of the commissioner’s regulatory authority under this title. The commissioner may grant access to the infor-

mation to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this State or any other state or agency of the federal government at any time, so long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.”

SECTION 7. Section 431:19-106.3, Hawaii Revised Statutes, is repealed.

SECTION 8. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken.<sup>2</sup> New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2008.

(Approved June 18, 2008.)

Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 191

H.B. NO. 2492

A Bill for an Act Relating to Planned Community Associations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 421J-5, Hawaii Revised Statutes, is amended to read as follows:

**“§421J-5 Meetings of the board of directors; committee or subcommittee.** (a) All meetings of the board of directors, other than executive sessions, shall be open to all members to provide input on the matters being discussed. Members who are not on the board of directors may participate in any deliberation or discussion, other than during executive sessions, unless a majority of a quorum of the board of directors votes otherwise.

(b) The board of directors shall meet at least once each year.

(c) The board of directors, with the approval of a majority of a quorum of its members, may adjourn any meeting and reconvene in executive session to discuss and vote upon matters concerning personnel, litigation in which the association is or may become involved, or as may be necessary to protect the attorney-client privilege of the association. The general nature of any business to be considered in executive session shall be first announced in the regular session.

(d) No board member shall vote by proxy at board meetings.

(e) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

(f) The board may appoint committees or subcommittees to review and consider any specific matters, and may alter or eliminate the committees or subcommittees; provided that the board in the minutes of the meeting at which the action was taken to appoint the committee or subcommittee shall:

- (1) Report that the committee or subcommittee was appointed;

- (2) Identify the members of the committee or subcommittee; and
- (3) Describe the matter that the committee or subcommittee is to review and consider.

(g) Minutes of the meetings of the board of directors shall include the recorded vote of each board member present on all motions except motions voted upon in executive session."

SECTION 2. Section 508D-1, Hawaii Revised Statutes, is amended by amending the definition of "disclosure statement" to read as follows:

"Disclosure statement" means a written statement prepared by the seller, or at the seller's direction, that purports to fully and accurately disclose all material facts relating to the residential real property being offered for sale that:

- (1) Are within the knowledge or control of the seller;
- (2) Can be observed from visible, accessible areas; or
- (3) Are required to be disclosed under sections 508D-4.5 and 508D-15.

If the residential real property being offered for sale is in a planned community[;] as defined in section 421J-2, "disclosure statement" includes the planned community declaration and association documents as those terms are defined in section 421J-2[-], and if the property is otherwise subject to restrictions or conditions on use, either because of covenants contained in the deed for the property or because of another recorded document, the disclosure statement shall also include all documentation relating to any restrictions or conditions, including but not limited to any unrecorded rules or guidelines that may have been issued by any entity responsible for enforcing those restrictions or conditions. Except for the disclosures required under section 508D-15[;] and this definition, no seller shall have any duty to examine any public records when preparing a disclosure statement."

SECTION 3. Section 508D-15, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Except as required under subsections (a) and (b), and in the definition of "disclosure statement" in section 508D-1, the seller shall have no duty to examine any public record when preparing a disclosure statement."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on November 1, 2008.

(Approved June 18, 2008.)

## ACT 192

H.B. NO. 3002

A Bill for an Act Relating to Prostitution.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§712- Habitual solicitation of prostitution.** (1) A person commits the offense of habitual solicitation of prostitution if the person is a habitual prostitution



**ACT 193**

offender and pays, agrees to pay, or offers to pay a fee to another person to engage in sexual conduct.

(2) For the purposes of this section, a person has the status of a “habitual prostitution offender” if the person, at the time of the conduct for which the person is charged, had two or more convictions within ten years of the instant offense for:

- (a) Prostitution, in violation of section 712-1200;
- (b) Street solicitation of prostitution, in violation of section 712-1207;
- (c) Habitual solicitation of prostitution, in violation of this section;
- (d) An offense of any other jurisdiction that is comparable to one of the offenses in paragraphs (a), (b), or (c); or
- (e) Any combination of the offenses in paragraphs (a), (b), (c), or (d).

A conviction for purposes of this section is a judgment on the verdict or a finding of guilt, or a plea of guilty or nolo contendere. The convictions must have occurred on separate dates and be for separate incidents on separate dates. At the time of the instant offense, the conviction must not have been expunged by pardon, reversed, or set aside.

(3) Habitual solicitation of prostitution is a misdemeanor.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval, and shall be repealed on June 30, 2010.

(Approved June 18, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 193**

H.B. NO. 3383

A Bill for an Act Relating to Hawaii Penal Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 706-668.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) If multiple terms of imprisonment are imposed on a defendant, whether at the same time[;] or at different times, or if a term of imprisonment is imposed on a defendant who is already subject to an unexpired term of imprisonment, the terms may run concurrently or consecutively. Multiple terms of imprisonment [~~imposed at the same time~~] run concurrently unless the court orders or the statute mandates that the terms run consecutively. [~~Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms run concurrently.~~]”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall apply to all terms of imprisonment imposed on or after the effective date of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 2008.)

## ACT 194

S.B. NO. 2826

A Bill for an Act Relating to Procurement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 103D-110, Hawaii Revised Statutes, is amended to read as follows:

**“§103D-110 Education and training.** (a) The department of human resources development, either alone or in cooperation with any governmental body, including the department of labor and industrial relations, or in cooperation with other states, the federal government, or other persons may:

- ~~[(1) Develop and maintain a comprehensive training and development program for procurement professionals of the State and the several counties;~~
- (2) (1) Conduct or participate in procurement education and training for persons not employed by the State; and
- ~~[(3)]~~ (2) Sponsor a purchasing certification program conducted by a voluntary organization of procurement professionals.

(b) The state procurement office, in cooperation with the department of human resources development, shall develop and maintain a procurement practices training and development program for procurement officers of the State and the several counties, to ensure that an agency’s procurement practices are in compliance with the procurement code and that proper procurement decisions are made consistent with this chapter. The program shall include a mandatory fundamental training and development session and follow-up training and development sessions.

(c) Each state procurement officer of a department of the executive branch shall attend a mandatory fundamental training and development session within sixty days of being appointed or named to the position of procurement officer.

(d) Each state procurement officer of a department of the executive branch whom the state procurement office determines is in need of further training and development based upon:

- (1) The history of procurement compliance to this chapter by the agency to which the particular procurement officer is attached; or
- (2) Any other need for training and development.

shall attend follow-up training and development sessions.

(e) Attendance by state procurement officers at the follow-up training and development sessions, other than as required under subsection (d), and by county procurement officials at the fundamental and follow-up training and development sessions is optional, though encouraged.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2009.

(Approved June 19, 2008.)

A Bill for an Act Relating to Money Transmitters.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 489D, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§489D- Name change.** To change its name, its fictitious name, or its trade name, a money transmitter shall file an application with the commissioner and pay a nonrefundable fee of \$250 or such greater amount as the commissioner shall establish by rule pursuant to chapter 91. The application shall be approved if the commissioner is satisfied that the new name complies with all applicable laws. Any change of name shall not affect a money transmitter’s rights, liabilities, or obligations existing prior to the effective date thereof, and no documents of transfer shall be necessary to preserve such rights, liabilities, or obligations; provided that the commissioner may require notice to be given to the public and other governmental agencies.

**§489D- Fees.** Unless otherwise provided by statute, all fees shall be deposited into the compliance resolution fund established pursuant to section 26-9(o).

**§489D- Limited exemption for financial institutions; financial institutions as authorized delegates.** (a) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, financial services loan companies, and mutual banks organized under the laws of the United States or any state shall be exempt from the licensing and examination provisions of this chapter.

(b) An applicant or licensee may appoint an entity described in subsection (a) as an authorized delegate.

(c) When submitting an application for a license pursuant to section 489D-9, or when submitting an annual report pursuant to section 489D-12, an applicant or licensee that appoints an entity described in subsection (a) as an authorized delegate shall include that entity’s name and the locations in this state where that entity will conduct its authorized delegate activities.

(d) When computing the application and license fees required to be paid pursuant to sections 489D-10 and 489D-12, an applicant or licensee that appoints an entity described in subsection (a) as an authorized delegate shall exclude all of the locations in this state where that entity will conduct its authorized delegate activities.”

SECTION 2. Section 489D-4, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

**““Principal” means any person, or group of persons acting in concert, who exercises control over or has a twenty-five per cent ownership interest in an applicant or licensee under this chapter. Principal also includes a manager and anyone else who supervises or is in charge of the applicant or licensee.”**

SECTION 3. Section 489D-4, Hawaii Revised Statutes, is amended by amending the definition of “permissible investments” to read as follows:

““Permissible investments” means:

- (1) Cash;
- (2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

- (3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, known as bankers' acceptances, that are eligible for purchase by member banks of the Federal Reserve System;
- (4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;
- (5) Investment securities that are obligations of the United States, its agencies, or its instrumentalities, obligations that are guaranteed fully as to principal and interest [of] by the United States, or any obligations of any state, municipality, or any political subdivision thereof;
- (6) Shares in a money market mutual fund, interest-bearing bills, notes, or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, mutual funds primarily composed of these securities, or a fund composed of one or more permissible investments as set forth in this subsection;
- (7) Any demand borrowing agreement or agreements made with a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;
- (8) Receivables that are due to a licensee from its authorized delegates pursuant to a contract under section 489D-21, that are not past due or doubtful of collection; or
- (9) Any other investments or security device approved by the commissioner."

SECTION 4. Section 489D-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply to:

- (1) The United States or any department, agency, or instrumentality thereof;
- (2) The United States Postal Service;
- (3) The State or any political subdivisions thereof;
- ~~[(4) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, financial services loan companies, or mutual banks organized under the laws of the United States or any state, even if those entities act as authorized delegates for licensees and provided that they do not issue or sell payment instruments through authorized delegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, financial services loan companies, or mutual banks;]~~ and
- ~~[(5) (4) The electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for, and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof."~~

SECTION 5. Section 489D-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) An application for a license under this chapter shall be made in writing, and in a form prescribed by the commissioner. Each application shall contain the following:

- (1) For all applicants:
  - (A) The exact name of the applicant, any fictitious or trade name used by the applicant in the conduct of its business, the applicant's

- principal address, and the location of the applicant's business records;
- (B) The history of the applicant's material litigation and criminal convictions for the five-year period prior to the date of the application;
  - (C) A description of the business activities conducted by the applicant and a history of operations;
  - (D) A description of the business activities in which the applicant seeks to engage within the [State;] state;
  - (E) A list identifying the applicant's proposed authorized delegates in the [State;] state, if any, at the time of the filing of the license application;
  - (F) A sample authorized delegate contract, if applicable;
  - (G) A sample form of payment instrument, if applicable;
  - (H) The locations where the applicant and its authorized delegates, if any, propose to conduct their licensed activities in the [State; and] state;
  - (I) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which payment instruments will be payable;
  - (J) Disclosure of any pending or final suspension, revocation, or other enforcement action by any state or governmental authority for the five-year period prior to the date of the application; and
  - (K) Any other information the commissioner may require;
- (2) If the applicant is a corporation, the applicant shall also provide:
- (A) The date of the applicant's incorporation and state of incorporation;
  - (B) A certificate of good standing from the state in which the applicant was incorporated;
  - (C) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary company of the applicant, and the disclosure of whether any parent or subsidiary company is publicly traded on any stock exchange;
  - (D) The name, business and residence address, and employment history, for the past five years, of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed under this chapter;
  - (E) The name, business and residence address, and employment history of any key shareholder of the applicant, for the period of five years before the date of the application;
  - (F) For the five-year period prior to the date of the application, the history of material litigation involving, and criminal convictions of, every executive officer or key shareholder of the applicant;
  - (G) A copy of the applicant's most recent audited financial statement, including balance sheets, statements of income or loss, statements of changes in shareholder equity and statement of changes in financial position, and, if available, the applicant's audited financial statements for the preceding two-year period or, if the applicant is a wholly owned subsidiary of another corporation, either the parent corporation's consolidated audited financial statements for the current year and for the preceding two-year period, or the parent corporation's Form 10-K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements, or if the applicant is

a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator; ~~and~~

- (H) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application; and
  - (I) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each of the executive officers, key shareholders, and managers who will be in charge of the applicant's activities, accompanied by the appropriate payment of the applicable fee for each record check;
- and
- (3) If the applicant is not a corporation, the applicant shall also provide:
    - (A) The name, business and residence address, personal financial statement, and employment history, for the past five years, of each principal of the applicant;
    - (B) The name, business and residence address, and employment history, for the past five years, of any other persons who will be in charge of the applicant's activities to be licensed under this chapter;
    - (C) The place and date of the applicant's registration or qualification to do business in this ~~[State;]~~ state;
    - (D) The history of material litigation and criminal convictions for the five-year period before the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility over the applicant's activities; ~~and~~
    - (E) Copies of the applicant's audited financial statements, including balance sheets, statements of income or loss, and statements of changes in financial position for the current year and, if available, for the preceding two-year period~~[-];~~ and
    - (F) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each principal of the applicant, accompanied by the appropriate payment of the applicable fee for each record check."

SECTION 6. Section 489D-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each application shall be accompanied by:

- (1) A ~~[non-refundable]~~ nonrefundable application fee in the amount of ~~[\$1,000]~~ \$2,000 plus ~~[\$100]~~ \$300 for each additional location in the ~~[State,]~~ state, not to exceed ~~[a maximum]~~ an aggregate fee of ~~[\$4,000;]~~ \$15,000; and
- (2) ~~[A]~~ An annual license fee of ~~[\$500]~~ \$2,000 plus ~~[\$100]~~ \$300 for each additional location in the ~~[State,]~~ state, not to exceed ~~[a maximum]~~ an aggregate fee of ~~[\$2,000-]~~ \$15,000."

SECTION 7. Section 489D-11, Hawaii Revised Statutes, is amended to read as follows:

**"[H]§489D-11[H] Issuance of license[-]; grounds for denial.** (a) Upon the filing of a complete application, the commissioner shall investigate the financial con-

dition and responsibility, financial and business experience, character, and general fitness of the applicant. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which shall be borne by the applicant.

(b) If the commissioner finds that:

- (1) The applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community;
- (2) The applicant has fulfilled the requirements imposed by this chapter; and
- (3) The applicant has paid the required license fee,

the commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in the [State] state for a term ~~[of one year. If these requirements have not been met, the commissioner shall deny the application in writing setting forth the reasons for the denial.]~~ expiring on December 31 of the calendar year in which the license is issued.

(c) If the commissioner is not satisfied that the applicant meets all the criteria set forth for approval, the commissioner shall issue a written decision denying the application.

~~[(e)]~~ (d) Any applicant aggrieved by a denial issued by the commissioner under this chapter may submit a request for a contested case hearing in accordance with chapter 91."

SECTION 8. Section 489D-12, Hawaii Revised Statutes, is amended to read as follows:

**~~[[§489D-12]]~~ Renewal of license and annual report.** (a) On or before December 31 of each year, each licensee shall pay to the commissioner an annual license fee of ~~[\$500,] \$2,000,~~ plus ~~[\$100] \$300~~ for each ~~[authorized delegate,] additional location in the state,~~ not to exceed an aggregate fee of ~~[\$2,000,] \$15,000.~~

(b) The annual license fee shall be accompanied by a report, in a form prescribed by the commissioner, which shall include:

- (1) A copy of the licensee's most recent audited annual financial statement, including balance sheets, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position or, if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation in lieu of the licensee's audited annual financial statement;
- (2) For the most recent quarter for which data is available prior to the date of ~~[the] filing [of] the [renewal application,]~~ annual report, but in no event more than one hundred twenty days prior to the renewal date, the licensee shall provide the number of payment instruments sold by the licensee in the ~~[State,] state,~~ the dollar amount of those instruments, and the dollar amounts of those instruments currently outstanding;
- (3) Any material changes to any of the information submitted by the licensee on its original application that have not previously been reported to the commissioner on any other report required to be filed under this chapter;
- (4) ~~[A list of the licensee's permissible investments; and]~~ For the most recent quarter for which data is available prior to the date of filing the annual report, but in no event more than one hundred twenty days prior to the renewal date, a list of the licensee's permissible investments, including the total market value of each type of permissible investment, and the total dollar amount of all outstanding payment instruments issued or sold by the licensee in the United States;

- (5) A list of the locations, if any, within this [State] state where business regulated by this chapter is being conducted by either the licensee or the licensee's authorized delegates[-];
- (6) Disclosure of any pending or final suspension, revocation, or other enforcement action by any state or governmental authority; and
- (7) Any other information the commissioner may require.

(c) A licensee that has not filed [~~a renewal~~] an annual report that has been deemed complete by the commissioner or paid its annual license fee by the renewal filing deadline, and has not been granted an extension of time to do so by the commissioner, shall have its license suspended on the renewal date. The licensee has thirty days after its license is suspended to file [~~a renewal~~] an annual report and pay the annual license fee, plus a late filing fee of \$100 for each business day after suspension that the commissioner does not receive the [~~renewal~~] annual report and the annual license fee. The commissioner, for good cause, may grant an extension of the renewal date or reduce or suspend the \$100 per day late filing fee."

SECTION 9. Section 489D-14, Hawaii Revised Statutes, is amended to read as follows:

"[~~§489D-14~~] **Extraordinary reporting requirements.** Within fifteen business days of the occurrence of any one of the events listed below, a licensee shall file a written report with the commissioner describing the event and its expected impact on the licensee's activities in this [State-] state. These events are:

- (1) Any material [~~changes~~] change in information provided in a licensee's application or [~~renewal~~] annual report;
- (2) The filing for bankruptcy or reorganization by the licensee;
- (3) [~~Revocation or suspension proceedings~~] Pending or final revocation, suspension, or other enforcement action against the licensee by any state or governmental authority relating to the licensee's money transmission activities;
- (4) Any felony indictment of the licensee or any of its key shareholders, principals, executive officers [or directors], or officers or managers in charge of the licensee's activities, related to money transmission activities; [~~or~~] and
- (5) Any felony conviction of the licensee or any of its key shareholders, principals, executive officers [or directors], or officers or managers in charge of the licensee's activities, related to money transmission activities."

SECTION 10. Section 489D-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A licensee shall [~~give~~] submit to the commissioner [written notice] an application requesting approval of a proposed change of control [~~and request approval of the proposal.~~] of the licensee, accompanied by a nonrefundable application fee of \$2,000."

SECTION 11. Section 489D-17, Hawaii Revised Statutes, is amended to read as follows:

"[~~§489D-17~~] **Examinations.** (a) The commissioner may conduct an annual on site examination of a licensee upon sixty days written notice to the licensee. The commissioner may examine a licensee without prior notice if the commissioner has a reasonable basis to believe that the licensee is not in compliance with this chapter. [~~When the commissioner concludes that an on-site examination of a licensee~~



~~is necessary, the licensee shall pay all reasonably incurred costs of the examination.]~~ The on site examination may be conducted in conjunction with examinations performed by representatives of agencies of the federal government, or of another state or states. The commissioner, in lieu of an on site examination, may accept the examination report of the federal government, an agency of another state, or an independent accounting firm. Accepted reports are considered, for all purposes, an official report of the commissioner. The licensee shall bear the cost of reasonable expenses incurred by the division, agencies of another state, or an independent licensed or certified public accountant in conducting an examination or making a report.

(b) The commissioner may request financial data from a licensee in addition to that required under section 489D-12, or conduct an on site examination of any authorized delegate or location of a licensee within the [State] state without prior notice to the authorized delegate or licensee only if the commissioner has a reasonable basis to believe that the licensee or authorized delegate is not in compliance with this chapter. When the commissioner examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of the examination. When the commissioner examines a licensee's location within the [State,] state, the licensee shall pay all reasonably incurred costs of the examination.

(c) The commissioner shall charge an examination fee to each licensed money transmitter and authorized delegate examined or investigated by the commissioner or the commissioner's staff, based upon the cost per hour per examiner. Effective July 1, 2008, the hourly fee shall be \$60.

(d) In addition to the examination fee, the commissioner shall charge any money transmitter or authorized delegate examined or investigated by the commissioner or the commissioner's staff, additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination."

SECTION 12. Section 489D-19, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§489D-19[H] Confidentiality of records.** (a) The commissioner and all employees, contractors, attorneys contracted or employed by the State, and appointees of the division of financial institutions shall not divulge or furnish any information in their possession or obtained by them in the course of their official duties to persons outside the division, except to the director of commerce and consumer affairs, or unless otherwise permitted by this section or any other law regulating licensees or authorized delegates, in which case the disclosure shall not authorize or permit any further disclosure of the information. The disclosures prohibited by this section shall include, without limitation, information that is:

- (1) Privileged or exempt from disclosure under any federal or state law;
- (2) Related to an examination performed by or on behalf of the commissioner or contained in any report of examination;
- (3) Contained in any report or application submitted to, or for the use of the commissioner, except for the nonproprietary portions of reports and applications[;], as determined by the commissioner pursuant to rule;
- (4) Related to the business, personal, or financial affairs of any person and is furnished to, or for the use of, the commissioner in confidence;
- (5) Privileged or confidential and related to trade secrets and commercial or financial information obtained from a person;
- (6) Obtained pursuant to any lawful investigation for the purpose of enforcing the laws regulating licensees or authorized delegates;
- (7) Related solely to the internal personnel rules or other internal practices of the commissioner;

- (8) Contained in personnel, medical, and similar files, including financial files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or
- (9) Contained in inter-agency and intra-agency communications, whether or not contained in written memoranda, letters, tapes, or records, that would not be routinely available by law to a private party, including memoranda, reports, and other documents prepared by the staff of the commissioner.

(b) Any information identified in subsection (a) is confidential and not subject to subpoena or other legal process.

(c) The commissioner shall furnish a copy of each report of examination to the licensee [or] and to any authorized delegate examined. The report and its contents shall remain the property of the commissioner and shall not be disclosed to any person who is not an officer, director, employee, authorized auditor, attorney, other consultant, or advisor of the licensee or authorized delegate. Any person who has received the report from the licensee or authorized delegate shall be bound by the confidentiality provisions of this section. The report and its contents shall not be subject to subpoena or other legal process requiring disclosure.

(d) The commissioner may furnish reports of examination and other information relating to the examination of a licensee or authorized delegate to:

- (1) The governor, the attorney general, and heads of other state governmental agencies with regulatory authority over the licensee or authorized delegate;
- (2) Federal, state, or foreign regulatory agencies if the requesting agency agrees to use the information only for functions directly related to the exercise of its appropriate supervisory authority; and
- (3) Other agencies of the United States or a state for use where necessary to investigate regulatory, civil, or criminal charges in connection with the affairs of any licensee or authorized delegate under the supervision of the commissioner.”

SECTION 13. Section 489D-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All money transmissions, sales, or issuances of payment instruments conducted by authorized delegates shall be in accordance with the licensee’s written procedures provided to the authorized delegate[-] and shall comply with all applicable federal and state laws, rules, and regulations.”

SECTION 14. Section 489D-28, Hawaii Revised Statutes, is amended to read as follows:

“[H]§489D-28[H] Civil penalties. (a) The commissioner may assess a fine against a person who violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed \$500 per day for each day the violation is outstanding, plus the State’s costs and expenses for the investigation and prosecution of the matter, including reasonable attorneys’ fees.

(b) All administrative fines collected under authority of this chapter shall be deposited into the compliance resolution fund established pursuant to section 26-9(o).”

SECTION 15. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care homes, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;

- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (22) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act [(42 U.S.C. §1396n(e))] (Title 42 United States Codes Section 1396n(c)), as provided by section 346-97; ~~and~~
- (24) The department of commerce and consumer affairs on:  
 (A) Each principal of every non-corporate applicant for a money transmitter license; and  
 (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,<sup>1</sup>  
as provided by section 489D-9; and
- [(24)] (25) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 17. This Act shall take effect on January 1, 2009.

(Approved June 19, 2008.)

#### Notes

1. Should be underscored.
2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Code of Financial Institutions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 412, Hawaii Revised Statutes, is amended by adding a new section to article 9, part I to be appropriately designated and to read as follows:

**“§412:9- Display of license.** Every financial services loan company shall display a copy of its principal office license in a conspicuous place at its principal office and shall display a copy of a branch office license in a conspicuous place at the branch office designated on the branch office license.”

SECTION 2. Section 412:2-306, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“§412:2-306 Removal or prohibition of institution-affiliated party[-]; grounds.”**

SECTION 3. Section 412:3-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the financial institution;
- (2) The specific location of its principal office, branches, agencies, and support facilities, and any lease agreements for such principal office, branches, agencies, and support facilities;
- (3) Financial statements, employment history, education, management experience, and other biographical information for all applicants, organizers, proposed executive officers, and directors of the financial institution;
- (4) The name and address of each proposed subscriber of capital stock in the financial institution;
- (5) The proposed capital plan, if capital has not been fully raised, that shall include:
  - (A) A description of any stock options, debentures, and stock warrants offered or proposed to be offered to any person; and
  - (B) Any stock option plan;
- (6) The proposed capital stock solicitation plan, if subscriptions for capital stock will be solicited, that shall include:
  - (A) Information regarding the solicitation plan by which the applicant and the proposed financial institution propose to conduct the solicitation of subscribers;
  - (B) Information regarding the classes of shares, respective quantities of shares for each class, and the subscription price of each class of stock;
  - (C) A specimen subscription contract or purchase agreement and other related documents to be executed by subscribers;
  - (D) Any underwriting agreement or other agreement for the purchase or distribution of the capital stock;
  - (E) Any escrow agreements or other agreement for the holding of the purchase proceeds of the capital stock;
  - (F) Proposed advertising materials;

- (G) If the offer and sale of the capital stock is subject to the Securities Act of 1933 and regulations thereunder, a copy of the registration statement most recently filed with the federal Securities and Exchange Commission or any other notices or other filings in lieu of registration required or permitted by that Act or regulation and any subsequent amendments thereto;
  - (H) If the offer and sale of the capital stock is subject to chapter 485A, a copy of the registration or qualification statement most recently filed with the commissioner of securities and any subsequent amendments thereto; and
  - (I) If the offer and sale of the capital stock is not subject to the Securities Act of 1933 or chapter 485A, whether exempted by law or regulation or otherwise, a copy of the most recent version of any prospectus, offering memorandum, offering circular, or other offering document proposed to be delivered to prospective subscribers to the capital stock, and any subsequent amendments thereto;
- (7) The financial institution's proposed policies concerning loans and concentrations of credit, asset and liability management, conflicts of interest, investments, community reinvestment, bank secrecy, anti-money laundering, and customer identification;
  - (8) The financial institution's business plan for the first three years of operations;
  - (9) Financial projections regarding the financial institution's profitability for the first three years of operations;
  - (10) A market study or letters of support evidencing the need and advisability of granting authority to organize a financial institution;
  - (11) Except for trust companies, evidence that the financial institution has applied for federal deposit insurance from the Federal Deposit Insurance Corporation or other appropriate federal deposit insurer;
  - (12) Evidence that the financial institution has applied for fidelity bonds and other insurance appropriate to its size and operations, including the types and the amounts of coverage, and the respective deductible amounts, from insurance companies licensed in the United States;
  - (13) Evidence that the proposed directors and executive officers of the financial institution have the financial ability, responsibility, and experience to engage in the business of a financial institution;
  - (14) The employment agreements for all proposed executive officers of the financial institution;
  - (15) The proposed articles of incorporation and bylaws of the financial institution;
  - (16) A description of any existing or proposed service corporation, affiliate, or subsidiary; ~~and~~
  - (17) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each of the proposed directors and executive officers of the financial institution, accompanied by payment of the applicable fee for each record check to be conducted; and
  - [(47)] (18) Any other information that the commissioner may require."

SECTION 4. Section 412:3-301, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the nondepository financial services loan company, the location of its principal office, and any lease agreements for ~~such~~ the principal office;
- (2) Any intended or existing affiliates, subsidiaries, and holding company of the proposed nondepository financial services loan company and the extent and nature of the holding company's control over the operations of the proposed nondepository financial services loan company;
- (3) A business plan which shall contain the following:
  - (A) A written description of the company's proposed financial products;
  - (B) A written statement which explains how the scope of the proposed business complies with article 9 and why any existing lines of business do not conflict with ~~the provisions of~~ article 9;
  - (C) A written description of the company's proposed plan of marketing its products, whether through affiliates, subsidiaries, service corporations, or holding company;
  - (D) Financial projections regarding the nondepository financial services loan company's profitability; and
  - (E) Any and all contractual arrangements which are intended to be executed between the nondepository financial services loan company and its holding company, affiliates, and subsidiaries;
- (4) Financial statements, employment history, education, management experience, and other biographical information for the proposed executive officers and directors of the nondepository financial services loan company and its holding company, if any;
- (5) Proposed policies regarding loans, investments, operations, accounting, recordkeeping, and compliance with applicable federal and state consumer laws;
- (6) The name and address of each proposed subscriber of capital stock in the nondepository financial services loan company or the majority shareholders in any holding company;
- (7) A copy of the nondepository financial services loan company's articles of incorporation and bylaws; ~~and~~
- (8) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each of the proposed directors and executive officers of the nondepository financial services loan company, accompanied by payment of the applicable fee for each record check to be conducted; and
- ~~(8)~~ (9) Any other information that the commissioner may require."

SECTION 5. Section 412:3-507, Hawaii Revised Statutes, is amended to read as follows:

**"§412:3-507 Closing branch or agency[-]; temporary closures.** (a) A Hawaii financial institution shall give the commissioner prior notice of its intent to close any branch or agency at least thirty days prior to the closing. The notice shall specify the intended date of closing, the reasons for the closing, and a certification by the secretary or other authorized officer of the institution that the decision to close was duly approved by its board of directors. This notice may be satisfied by delivery to the commissioner of a copy of any notice pertaining to the closure given to the financial institution's appropriate federal regulatory agency.

(b) A Hawaii financial institution may temporarily close a branch or agency in the event of an emergency for a period of time up to one hundred eighty days, or a longer time period as determined necessary by the commissioner. For purposes of

this section, an emergency means a situation of an unusual or compelling urgency that creates a threat to life, public health, welfare, or safety by reason of major natural disaster, epidemic, riot, fire, or other reason as determined by the commissioner. Written notice shall be provided to the commissioner upon closure as soon as practicable, and notice shall be provided to the Hawaii financial institution's customers in the form of a sign posted at the primary public entrance of the branch or agency. The written notices shall state the reasons for the closure, the expected date of reopening, and information regarding where and how customers of the closed branch or agency will be accommodated during the temporary closure. Notice of the reopening shall be provided to the commissioner within five days of the reopening."

SECTION 6. Section 412:8-103, Hawaii Revised Statutes, is amended to read as follows:

**"§412:8-103 Authority to serve as trustee.** Unless chartered as a trust company under this chapter or otherwise specifically authorized by the laws of this State, no person~~[-, except an individual acting as a co-trustee,]~~ shall hold itself out to the general public as being available to serve as a trustee or trust company, whether or not for compensation. No person shall use the term "trust company" as part of its name unless chartered as a trust company pursuant to this chapter."

SECTION 7. Section 412:9-304, Hawaii Revised Statutes, is amended to read as follows:

**"§412:9-304 Consumer loan charges.** Unless specifically authorized in this article or by rule adopted by the commissioner, a financial services loan company shall only have the right to charge, contract for, and receive in advance or otherwise, the following charges in addition to the interest permitted in section 412:9-302 for a consumer loan made under this article~~[?]~~, including but not limited to a first-lien mortgage loan:

- (1) Late charges under the consumer loan on any delinquent installment, or portion of the delinquent installment where there has been no extension or deferment. Delinquency occurs when the installment or payment is not paid on the due date. Late charges shall not be collected more than once for the same delinquent installment. Late charges on any consumer loan shall not exceed five per cent of the delinquent installment, and late charges shall not be assessed on any consumer loan after acceleration of the maturity of the consumer loan;
- (2) A prepayment penalty as provided in the note or other form of contract signed by the borrower on any amount that is voluntarily prepaid; provided that:
  - (A) The prepayment penalty on any consumer loan with a term of five years or more that is primarily secured by an interest in real property and in which the interest rate is computed under section 412:9-301(2) and which is prepaid within five years of the date of the loan shall be computed on the amount prepaid in excess of twenty per cent of the original principal amount of the loan in any twelve-month period measured from the date of the loan or from any anniversary of the loan date. The prepayment penalty may be charged only on amounts in excess of the twenty per cent amount in each twelve-month period in such five-year period and shall not exceed six months of interest at the [maximum] then-applicable loan interest rate [permissible for the consumer loan by law] on



the amount prepaid; provided that the interest rate is permissible under applicable usury law;

- (B) The prepayment penalty shall not be charged on a consumer loan that is a variable rate or open-end loan, on a precomputed loan on which interest is computed under section 412:9-301(1), or on loans that are not secured by real estate; and
  - (C) The prepayment penalty shall not be charged on any amount that is paid because of the exercise of any acceleration provision by the financial services loan company;
- (3) Extension or deferment charges on any payment on account of the principal balance of a loan, or a portion thereof, that is due on a particular date, but is extended or deferred to a later date by mutual agreement. The charges shall be based upon the amount so extended or deferred at interest not exceeding that permitted upon the original loan under section 412:9-302, for the actual period of the extension or deferment. The extension or deferment charges may be collected either in advance at the commencement of the period of extension or deferment or otherwise as agreed. The term and conditions of the extension or deferment, including the amount of the consumer loan so extended or deferred, and the period of, and the charge for the extension or deferment shall be set forth in writing and signed by the borrower with one copy given to the borrower;
- (4) Nonrefundable discount, points, loan fees, and loan origination charges; provided that:
- (A) Discount, points, loan fees, and loan origination charges shall not be charged on precomputed loans on which interest is computed under section 412:9-301(1); and
  - (B) The nonrefundable discount, points, loan fees, and loan origination charges shall be permitted on consumer loans on which interest is computed under section 412:9-301(2) if the consumer loan is secured by an interest in real property or if the consumer loan is made to a lessee of land subject to the Hawaiian Homes Commission Act and the loan, but for the provisions of the Act, would be secured by a mortgage on the leasehold interest. Provided further that, except for open-end loans, the nonrefundable discount, points, loan fees, and origination charges shall be included as interest to determine compliance of the loan with the interest rate limits under section 412:9-302(b)(2) when the consumer loan is made.
- The nonrefundable discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan commitment agreement or other form of contract is executed and the commitment fee paid, or on the date the consumer loan is made, and shall not be subject to refund on prepayment of the consumer loan;
- (5) Fees, charges, and expenses reasonably related to the consumer loan that are retained by the financial services loan company; provided that the fees, charges, and expenses are charged only on consumer loans that are secured by an interest in real property; and provided further that the total dollar amount of the fees, charges, and expenses, whether or not itemized, shall not exceed one per cent of the principal amount of the loan. The fees, charges, and expenses may include but are not limited to notary fees, appraisal fees, appraisal review fees, and fees for the development, processing, and preparation of loan documents, including

deeds, promissory notes, mortgages, and reconveyance, settlement, and similar documents;

- (6) Fees, charges, and expenses reasonably related to the consumer loan that are actually paid to third parties, affiliates, or subsidiaries for services actually rendered, no portion of which is rebated, refunded, or paid directly or indirectly to the financial services loan company by the third parties, affiliates, or subsidiaries. The fees, charges, and expenses may include but are not limited to charges for credit reports, actual taxes, and fees charged by a governmental agency for recording, filing, or entering of record any security agreements or instruments, including the partial or complete release of such security agreements or instruments, insurance premiums of the kind and to the extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z of the Board of Governors of the Federal Reserve System and to the extent that the insurance premium does not exceed \$20, appraisal fees, appraisal review fees, title report or title insurance fees, mortgage reserve funds to be used for payment of taxes, insurance, lease rent and condominium assessments, real property tax services fees, wire transfer fees, and attorney's fees and expenses for documentation of the consumer loan or for the collection of any consumer loan in default."

SECTION 8. Section 412:10-103, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the credit union;
- (2) Proposed lease agreements for its principal office;
- (3) The territory in which the proposed credit union will operate;
- (4) A business plan;
- (5) Employment history, education, management experience, and other biographical information for all original chartering applicants, and proposed executive officers of the credit union;
- (6) Proposed policies regarding loans, investments, operations, accounting, recordkeeping, and applicable federal and state consumer laws; ~~and~~
- (7) Information necessary to conduct a criminal history record check in accordance with section 846-2.7 of each of the original chartering applicants and proposed executive officers of the credit union, accompanied by payment of the applicable fee for each record check to be conducted; and

~~(7)~~ (8) Any other information that the commissioner may require."

SECTION 9. Section 412:11-102, Hawaii Revised Statutes, is amended to read as follows:

**"§412:11-102 Examination of financial institution holding company.** The commissioner may from time to time conduct ~~[such]~~ reasonable examinations of any financial institution holding company that directly owns twenty-five per cent or more of any class of voting securities of a Hawaii financial institution as may be necessary or appropriate to determine whether the condition or activities of the company are jeopardizing the safety or soundness of the operations of its financial institution subsidiary. The commissioner shall not conduct ~~[such examinations]~~ an examination of any financial institution holding [companies] company that indirectly controls a Hawaii financial institution through one or more financial institution holding companies unless the commissioner has good cause to believe that ~~[a]~~ the financial

institution holding company indirectly controlling the Hawaii financial institution is experiencing financial adversity [which] that will have a material negative impact on the safety and soundness of [its] the Hawaii financial institution [subsidiary]. The cost of [such] the examinations shall be assessed against and paid by the financial institution holding company in the same manner as financial institutions under section 412:2-105.”

SECTION 10. Section 412:13-222, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall relocate any Hawaii office without the commissioner’s prior written approval[-]; provided that approval shall not be required if:

- (1) The relocation will be less than one mile from the foreign bank’s present place of business;
- (2) The foreign bank gives the commissioner written notice at least twenty days prior to the move;
- (3) The type of business carried on at the new place of business will be the same as at the present place of business; and
- (4) There will be no financial involvement in the relocation by a director, executive officer, or principal shareholder, or a related interest of any of these persons.”

SECTION 11. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care homes, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;

- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;

- (22) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (42 U.S.C. § 1396n(c)), as provided by section 346-97; [and]
- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103; and
- [(24)] (27) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 13. This Act shall take effect on July 1, 2008.

(Approved June 19, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 197**

H.B. NO. 931

A Bill for an Act Relating to Mopeds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291C-195, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-195 Driving of mopeds.** (a) No person less than fifteen years of age shall drive a moped on a highway, street, roadway, or any other public property in the [State:] state. No person less than eighteen years of age shall drive a moped unless the person wears a safety helmet securely fastened with a chin strap. The safety helmet shall meet the specifications and requirements established by rules adopted by the director.

(b) No person shall drive a moped except while sitting astride the seat, facing forward, with one leg on each side of the moped.

(c) No person shall drive a moped which is carrying any other person nor shall any person other than the driver ride upon a moped.

(d) Subsections (b) and (c) shall not apply to three-wheeled mopeds designed to carry a driver and passenger seated side by side.

(e) Three-wheeled mopeds shall be insured for liability and property damage, excluding personal injury protection.”

SECTION 2. Section 291C-196, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-196 Driving mopeds on roadways.** (a) Every person driving a moped, except a three-wheeled moped, upon a roadway at a speed less than the normal speed of traffic moving in the same direction at such time shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction, except under any of the following situations:

- (1) When preparing for a left turn at an intersection or into a private road or driveway, except where prohibited by official traffic-control devices;
- (2) When reasonably necessary to avoid conditions (including, but not limited to fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes) that make it unsafe to continue along the right-hand curb or edge; and
- (3) When a roadway is designated and signposted to carry traffic in one direction only and has two or more marked traffic lanes, a person operating a moped may ride as near to the left-hand side of the roadway as practicable.

(b) Persons driving mopeds upon a roadway shall drive in single file.

(c) No person shall drive a moped on any sidewalk or area intended for use as a sidewalk, nor shall any person drive a moped on any path or other area intended for the exclusive use of pedestrians.

(d) A three-wheeled moped shall be restricted to traveling on roadways with a posted speed limit of thirty-five miles per hour or less.”

SECTION 3. Section 291C-197, Hawaii Revised Statutes, is amended to read as follows:

**“~~§291C-197~~ Driving mopeds on bicycle lanes and paths.** (a) Whenever bicycle lanes are provided on the roadway, moped drivers shall use such bicycle lanes.

(b) The director of transportation by rule and the counties by ordinance may with respect to bicycle paths under their respective jurisdictions restrict or prohibit the use of such bicycle paths by mopeds. Signs clearly visible to an ordinarily observant person indicating the restriction or prohibition shall be placed along bicycle paths so designated and every moped driver shall obey the directions thereof.

(c) This section shall not apply to a three-wheeled moped.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2008.

(Approved June 19, 2008.)

A Bill for an Act Relating to Higher Education Board Allowance for Former Foster Youth.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 346-16, Hawaii Revised Statutes, is amended by amending the definition of “former foster youth” to read as follows:

““Former foster youth” means a person formerly placed under the jurisdiction of the department as a foster child by the family court pursuant to chapter 587 who has attained the age of eighteen[-] while under the placement responsibility of the department or who was under the placement responsibility of the department when a legally responsible caregiver was granted custody.”

SECTION 2. Section 346-17.4, Hawaii Revised Statutes, is amended to read as follows:

**“§346-17.4 Higher education board allowances for students.** (a) ~~[Eligible]~~ An eligible former foster [youths] youth shall be eligible for higher education board allowances after reaching the age of majority, and the higher education board ~~[payments]~~ allowance for that former foster youth shall be paid to an accredited institution of higher ~~[learning;]~~ education, another intermediary contracted by the department, the former foster youth, or to the former foster youth’s former foster parents[-] or legal custodians, as appropriate; provided that:

- (1) The former foster youth is ~~[twenty-one]~~ twenty-six years old or younger; ~~[and]~~
- (2) ~~[Within one school year after high school completion, the former foster youth is attending or has been accepted to attend an accredited institution of higher learning on a full-time basis, or on a part-time basis for the first academic year, if approved by the director upon such terms and conditions as the director deems appropriate.]~~ The former foster youth has submitted an application for the higher education board allowance through the age of twenty-one years old, except that a former foster youth who is between the ages of twenty-two years and twenty-six years on July 1, 2008, and attending an institution of higher education, may apply for a higher education board allowance after July 1, 2008, and no later than June 30, 2009; and
- (3) The former foster youth is attending or has been accepted to attend an accredited institution of higher education.

~~(b)~~ (b) The higher education board allowance may be issued while the former foster youth is attending an accredited institution of higher education on a full-time basis or on a part-time basis, in accordance with rules adopted by the department.

~~[(b)]~~ (c) Reimbursement to foster parents for the former foster youth’s higher education board cost up to the maximum allowable board amount shall be made retroactive to the former foster youth’s entry into an accredited institution of higher [learning] education on a full-time basis, but no earlier than July 1, 1987, or on a part-time basis for the first academic year, but no earlier than July 1, 1999.

~~[(e)]~~ (d) Higher education board allowances may be applied by the former foster youth to costs incurred in undertaking full-time studies or part-time studies [for the first academic year, if approved by the director upon such terms and conditions as the director deems appropriate,] at an institution of higher [learning-] education in accordance with rules adopted by the department.

(e) The duration of the total higher education board allowance shall not exceed sixty months.

~~[(d)]~~ (f) The department's standards relating to income resources of foster children shall be applicable to this section.

(g) Higher education board allowances shall be provided subject to the availability of state and federal funds."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved June 20, 2008.)

## ACT 199

S.B. NO. 2730

A Bill for an Act Relating to Child Protection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§587- Relatives; foster placement.** The department shall provide an application within fifteen days of an inquiry from a relative to be a foster placement. If an application to be a foster parent is submitted and denied, the department shall provide the applicant with the specific reasons for the denial and an explanation of the procedures for an administrative appeal."

SECTION 2. Section 587-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

**"Hanai relative"** means an adult other than a blood relative who performs or has performed a substantial role in the upbringing or material support of a child, as attested to by the written or oral designation of the child or of another person, including other relatives of the child, as deemed credible by the court or the department.

**"Relative"** means a person related by blood or adoption, or a hanai relative, as defined in this chapter, who is willing and able to safely provide support to the child and the family, as determined by the court or the department."

SECTION 3. Section 587-1, Hawaii Revised Statutes, is amended to read as follows:

**"§587-1 Purpose; construction.** This chapter creates within the jurisdiction of the family court a child protective act to make paramount the safety and health of children who have been harmed or are in life circumstances that threaten harm. Furthermore, this chapter makes provisions for the service, treatment, and permanent plans for these children and their families.

The legislature finds that children deserve and require competent, responsible parenting and safe, secure, loving, and nurturing homes. The legislature finds that children who have been harmed or are threatened with harm are less likely than other children to realize their full educational, vocational, and emotional potential, and become law-abiding, productive, self-sufficient citizens, and are more likely to become involved with the mental health system, the juvenile justice system, or the criminal justice system, as well as become an economic burden on the State. The leg-



islature finds that prompt identification, reporting, investigation, services, treatment, adjudication, and disposition of cases involving children who have been harmed or are threatened with harm are in the children's, their families', and society's best interests because the children are defenseless, exploitable, and vulnerable. The legislature recognizes that many relatives are willing and able to provide a nurturing and safe placement for children who have been harmed or are threatened with harm.

The policy and purpose of this chapter is to provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families if the families can provide safe family homes, and with timely and appropriate service or permanent plans to ensure the safety of the child so they may develop and mature into responsible, self-sufficient, law-abiding citizens. The service plan shall effectuate the child's remaining in the family home, when the family home can be immediately made safe with services, or the child's returning to a safe family home. The service plan ~~should~~ shall be carefully formulated with the family in a timely manner. Every reasonable opportunity should be provided to help the child's legal custodian to succeed in remedying the problems ~~which~~ that put the child at substantial risk of being harmed in the family home. Each appropriate resource, public and private, family and friend, should be considered and used to maximize the legal custodian's potential for providing a safe family home for the child. Full and careful consideration ~~should~~ shall be given to the religious, cultural, and ethnic values of the child's legal custodian when service plans are being discussed and formulated. Where the court has determined, by clear and convincing evidence, that the child cannot be returned to a safe family home, the child ~~will~~ shall be permanently placed in a timely manner.

The department's child protective services provided under this chapter shall make every reasonable effort to be open, accessible, and communicative to the persons affected in any manner by a child protective proceeding; provided that the safety and best interests of the child under this chapter shall not be endangered in the process.

This chapter shall be liberally construed to serve the best interests of the children and the purposes set out in this chapter."

SECTION 4. Section 587-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon satisfying itself as to the course of action that should be pursued to best accord with the purpose of this chapter, the department shall:

- (1) Resolve the matter in an informal fashion appropriate under the circumstances;
- (2) Seek to enter into a service plan, without filing a petition in court, with members of the child's family and other authorized agency as the department deems necessary to the success of the service plan, including ~~[but not limited to,]~~ the member or members of the child's family who have legal custody of the child. The service plan may include an agreement with the child's family to voluntarily place the child in the foster custody of the department or other authorized agency, provided that placement preference shall be given to an appropriate relative identified by the department, or to place the child and the necessary members of the child's family under the family supervision of the department or other authorized agency; provided further that if a service plan is not successfully completed within six months, the department shall file a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter and the case shall be reviewed as is required by federal law;

- (3) Assume temporary foster custody of the child pursuant to section 587-24(a) and file a petition with the court under this chapter within three working days, excluding Saturdays, Sundays, and holidays, after the date of the department's assumption of temporary foster custody of the child; provided that placement preference shall be given to an appropriate relative identified by the department; or
- (4) File a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter."

SECTION 5. Section 587-24, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Upon assuming temporary foster custody of a child under this chapter, the department shall place the child in emergency foster care, unless the child is admitted to a hospital or similar institution, while it conducts an appropriate investigation[-]; provided that placement preference for emergency foster care shall be given to the appropriate relative identified by the department. The department and authorized agencies shall make reasonable efforts to identify all relatives within six months of assuming foster custody of the child."

SECTION 6. Section 587-25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following guidelines shall be fully considered when determining whether the child's family is willing and able to provide the child with a safe family home:

- (1) The current facts relating to the child which include:
  - (A) Age and vulnerability;
  - (B) Psychological, medical, and dental needs;
  - (C) Peer and family relationships and bonding abilities;
  - (D) Developmental growth and schooling;
  - (E) Current living situation;
  - (F) Fear of being in the family home; and
  - (G) Services provided the child;
- (2) The initial and any subsequent reports of harm [~~and/or~~] and threatened harm suffered by the child;
- (3) Date(s) and reason for the child's placement out of the home, description, appropriateness, [~~and~~] location of the placement [~~and~~], and who has placement responsibility;
- (4) Historical facts relating to the alleged perpetrator and other appropriate family members who are parties which include:
  - (A) Birthplace and family of origin;
  - (B) How they were parented;
  - (C) Marital/relationship history; and
  - (D) Prior involvement in services;
- (5) The results of psychiatric/psychological/developmental evaluations of the child, the alleged perpetrator, and other appropriate family members who are parties;
- (6) Whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the family home;
- (7) Whether there is a history of substance abuse by the child's family or others who have access to the family home;
- (8) Whether the alleged perpetrator(s) has acknowledged and apologized for the harm;

- (9) Whether the non-perpetrator(s) who resides in the family home has demonstrated the ability to protect the child from further harm and to ~~[insure]~~ ensure that any current protective orders are enforced;
- (10) Whether there is a support system of extended family ~~[and/or]~~, including adoptive and hanai relatives, and friends available to the child's family[;] and what attempts have been made to locate and identify extended family, friends, or both;
- (11) Whether the child's family has demonstrated an understanding and ~~[utilization]~~ use of the recommended/court ordered services designated to effectuate a safe home for the child;
- (12) Whether the child's family has resolved or can resolve the identified safety issues in the family home within a reasonable period of time;
- (13) Whether the child's family has demonstrated the ability to understand and adequately parent the child especially in the areas of communication, nurturing, child development, perception of the child and meeting the child's physical and emotional needs; and
- (14) Assessment (to include the demonstrated ability of the child's family to provide a safe family home for the child) and recommendation."

SECTION 7. Section 587-53, Hawaii Revised Statutes, is amended by amending subsection (d) as follows:

1. By amending subsection (d) to read:<sup>1</sup>

"(d) During a continuance period ordered pursuant to subsection (c) or at any other time during the pendency of a child protective proceeding, the court may further order that:

- (1) Any party undergo a physical, developmental, psychological, or psychiatric evaluation and that a written or oral report be submitted to the court and all parties prior to or upon the date of the continued or next hearing;
- (2) The child's family members who are parties provide the department or other appropriate authorized agency with the names and addresses of other ~~[family]~~ relatives and friends who may be potential visitation supervisors or foster parents for the child and that they arrange for the persons to appear in court upon the date of the continued or next hearing;
- (3) The child's family members who are parties be permitted reasonable supervised or unsupervised visitation with the child at the discretion of the department or other appropriate authorized agency and the child's guardian ad litem;
- (4) The parties, subject to their agreement unless jurisdiction has been established, meet with appropriate expert witnesses to discuss the alleged harm to the child;
- (5) The court and the parties view a visual recording or listen to an oral recording of the child's statement at such time and in such manner as the court deems to be appropriate;
- (6) The child and the child's family members who are parties, subject to their agreement unless jurisdiction has been established, arrange and commence participation in such counseling or therapy for themselves and the child as the court deems to be appropriate and consistent with the best interests of the child;
- (7) An appropriate order of protection be entered;
- (8) A criminal history record check be conducted by the department or other appropriate authorized agency concerning a party who is an alleged perpetrator of imminent harm, harm, or threatened harm to the child, and that the results be submitted to the court and other parties in such

- manner as the court deems to be appropriate prior to or upon the date of the continued or next hearing;
- (9) The department or other appropriate authorized agency prepare a written or oral supplemental report pursuant to section 587-40 and submit the report to the court, the guardian ad litem, and all parties prior to or upon the date of the continued or next hearing; or
  - (10) The child's guardian ad litem visit the child's family home and foster home, be present during a supervised visitation, and prepare a written or oral report, including specific recommendations concerning services and assistance, to be submitted to the court and all parties prior to or upon the date of the continued or next hearing."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 9. This Act shall take effect on July 1, 2008.

(Approved June 20, 2008.)

#### Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.

## ACT 200

S.B. NO. 3227

A Bill for an Act Relating to Harbors.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. To meet the economic needs of the state, the harbors division of the department of transportation must provide suitable harbor facilities and berthing piers, which in turn ensures the efficient and timely delivery and shipment of goods imported into the state. Ocean surface transportation is our state's lifeline. It remains the only viable means to service the largest share of Hawaii's economic needs. However, Hawaii's aging commercial harbor system has not kept pace with our growing economy, and Hawaii's commercial ports statewide are experiencing competition for berthing rights for cargo, fuel, and cruise ship activities, and severe congestion in harbor facilities. Harbor users, the state administration, and the legislature recognize that it is now extremely critical to upgrade existing port facilities and develop harbor improvements in an expedited manner. The Hawaii Harbors Users Group, a maritime transportation industry group, was formed in 2005 because the industry recognized that Hawaii is facing a shortage of port facilities statewide. Its goal is to help the State identify and prioritize Hawaii's harbor improvement needs. The Hawaii Harbors Users Group has completed research that predicts that if Hawaii's harbor infrastructure is not improved, the loss of real domestic product (in 2007 dollars) could amount to more than \$50,000,000,000 by the year 2030. In comparison, an assessment of immediate commercial harbor needs statewide is estimated to cost in the range of \$850,000,000.

Under its statutory mandate, the harbors division focuses on essential daily management and operations of the commercial harbor system rather than development of new expansion opportunities. To expeditiously develop critically needed harbor infrastructure improvements and curtail statewide economic hardships that

will occur if the harbors reach maximum cargo handling capacity by the year 2011 as currently projected, the harbors division partnered with Aloha Tower development corporation, an entity with a development-oriented mission, statutory powers, and expertise in the development of state-owned properties for development of Honolulu harbor pursuant to this Act.

The harbors division is additionally stymied by the lack of funding necessary to develop costly wharves and cargo handling terminals and its traditional structure limits its ability to consider development-oriented financing options such as public or private partnerships, but the Aloha Tower development corporation is empowered to do such things. A partnership with the Aloha Tower development corporation, which has jurisdiction over a portion of Honolulu harbor, can also assist the harbors division by providing financial support from its limited commercial development along the downtown urban waterfront. Revenues generated from commercial development are proposed to be directed toward the funding of commercial harbor system infrastructure improvements.

The legislature, together with the administration and key harbor users, recognizes that extraordinary means must be employed to catch up on deferred harbor infrastructure development. Accordingly, the legislature finds that the harbors division should be given further development tools to accomplish the formidable task of bringing the State's commercial harbors up to the standards needed to sustain economic growth. The purpose of this Act is to expand the formal partnership for development of Honolulu harbor between the Aloha Tower development corporation and the department of transportation harbors division to a statewide jurisdiction for the implementation of the commercial harbors modernization plan.

SECTION 2. Section 171-59, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Disposition of public lands for airline, aircraft, airport-related, agricultural processing, cattle feed production, aquaculture, marine, maritime, and maritime-related operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:

- (1) The disposition encourages competition within the aeronautical, airport-related, agricultural, aquaculture, maritime, and maritime-related [~~industries;~~] operations;
- (2) The disposition shall not exceed a maximum term of thirty-five years[; ~~and~~], except in the case of maritime and maritime-related operations, which may provide for a maximum term of seventy years; and
- (3) The method of disposition of public lands for cattle feed production as set forth in this subsection shall not apply after December 31, 1988.

For the [~~purpose~~] purposes of this subsection:

[~~"agricultural processing"~~] "Agricultural processing" means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii[; ~~"airport-related"~~].

"Airport-related" means a purpose or activity that requires air transportation to achieve that purpose or activity[, ~~and~~ "maritime-related"].

"Maritime-related" means a purpose or activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services of the maritime industry."

SECTION 3. Section 206J-2, Hawaii Revised Statutes, is amended by amending the definition of "development corporation" to read as follows:

~~"Development corporation"~~ means the Aloha Tower [~~Development Corporation~~] development corporation established by section 206J-4."

SECTION 4. Section 206J-4, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

**“§206J-4 Aloha Tower [~~Development Corporation;~~ development corporation]; established. (a) There is established the Aloha Tower [~~Development Corporation;~~ development corporation], which shall be a public body corporate and politic, a public instrumentality, and an agency of the State. The development corporation shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35.**

(b) [~~The~~ Except as provided in section 206J-5.5, the development corporation shall consist of a board of directors having seven voting members. The director of business, economic development, and tourism, the director of transportation, the chairperson of the board of land and natural resources, and the mayor of the city and county of Honolulu, or their respective designated representatives, shall serve as ex officio voting members. Three members from the public at large shall be appointed by the governor for staggered terms pursuant to section 26-34 and shall also serve as voting members; provided that no public member shall be an officer or employee of the State or its political subdivisions. All members shall continue in office until their respective successors have been appointed. The board, by a majority vote, shall elect a chairperson from within its membership.”

SECTION 5. Section 206J-5.5, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~206J-5.5[~~]~~ Partnership with department of transportation for [~~Honolulu harbor;~~ the implementation of the commercial harbors modernization plan and the establishment of the harbors modernization group. (a) Consistent with its general powers under this chapter, the development corporation [~~may~~ shall] establish a subgroup called the harbors modernization group to undertake projects for [~~Honolulu harbor and its adjacent lands;~~ the commercial harbors modernization plan in subsection (b). which are under the jurisdiction of the department of transportation. Notwithstanding any provision in section 206J-17 to the contrary, payments to the development corporation for its administrative and operational expenses shall be made by the department of transportation and deposited into the Aloha Tower fund in a subaccount designated for [~~the particular development project;~~ commercial harbors modernization plan projects. The department of transportation shall delegate to the development corporation the implementation of commercial harbors modernization plan projects. All projects, prior to implementation by the development corporation, shall be approved by the director of transportation and the governor. After approval by the director of transportation and the governor, the expending authority for the approved projects shall be delegated to the development corporation.**

[~~(b) All appropriations for the development of Honolulu harbor by the development corporation shall be received and administered by the department of transportation. The department of transportation shall retain fiscal management and oversight of all project cost expenditures, budget, and contract approvals.~~]

**(b) The harbors modernization group shall have jurisdiction over harbors projects that shall collectively be known as the commercial harbors modernization plan. These harbor projects shall be as follows:**

- (1) Honolulu harbor. Development of infrastructure, expansion of facilities, and tenant relocations, including the development of the new Kapalama container terminal;
- (2) Kahului harbor. Development of infrastructure, expansion of facilities, tenant relocations, and acquisition of lands, including the West harbor barge or ferry slip or both, West harbor dredging and breakwater, West

harbor cruise terminal, Pier 1 fuel line replacement and upgrade, East harbor breakwater, and Pier 2B strengthening;

- (3) Hana Harbor. Development of infrastructure, demolition, as necessary, and expansion of facilities and acquisition of lands;
- (4) Hilo harbor. Development of infrastructure, expansion of facilities, tenant relocations, and acquisition of lands, including the Pier 4 interisland cargo terminal;
- (5) Kawaihae harbor. Development of infrastructure, expansion of facilities, tenant relocations, acquisition of lands, including the Pier 2 terminal and barge improvements, Pier 2 extension and terminal, and Pier 4 and liquid bulk terminals;
- (6) Kalaeloa harbor. Development of infrastructure, expansion of facilities, tenant relocations, and acquisition of lands, including the West harbor infrastructure, Pier 4 dedicated fuel pier, and extension of the fuel line; and
- (7) Nawiliwili harbor. Development of infrastructure, expansion of facilities, tenant relocations, and acquisition of lands, including the new multi-use pier.

(c) For the purposes of this section, the chief executive officer shall have the power to appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76.

(d) Land disposition matters in projects identified in the commercial harbors modernization plan, including land acquisition, leasing, and conveyance, and acquisition of easements or rights-of-ways, shall continue to be under the jurisdiction of the board of land and natural resources pursuant to chapter 171.

(e) The harbors modernization group, when acting pursuant to subsection (f), shall retain all the powers of the development corporation under sections 206J-5 to 206J-21.

(f) Except as otherwise provided in this subsection, the harbors modernization group shall be comprised of six voting members appointed by the governor to the development corporation in addition to those members appointed under section 206J-4(b), and pursuant to section 26-34.

The harbors modernization group shall consist of:

- (1) The director of budget and finance, or a designated representative, who shall serve as an ex officio voting member;
- (2) Two public members from the maritime industry who shall be directly involved with a harbor or off-shore mooring facility that is primarily for the movement of commercial cargo, passenger, and fishing vessels entering, leaving, or traveling within the state harbor system, or directly involved with an activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services by means of seaborne transportation; and
- (3) The mayors of the counties of Hawaii, Maui, and Kauai, or their designated representatives, who shall serve as ex officio voting members.

The members of the harbors modernization group shall serve for four year terms and shall continue in office until their respective successors have been appointed. The chairperson of the corporation board shall serve as the chairperson of the harbors modernization group.

The members of the harbors modernization group shall act and be counted in determining quorum and majority for development corporation actions only with respect to directing the planning, design, construction, and financing of the harbor projects identified in the commercial harbors modernization plan. A majority of members of the development corporation and four of the six members of the harbor modernization group shall constitute quorum for matters relating to directing the

planning, design, construction, and financing of the harbor projects identified in the commercial harbors modernization plan. A majority of the voting members of the quorum shall be required to validate any act relating to the harbor projects. These members shall serve without compensation, but each member shall be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

~~(e)~~ (g) Subject to existing contractual and statutory commitments to the department of transportation for any losses in revenue under this chapter, the development corporation may apply any revenues derived from commercial development projects in the Aloha Tower project area to defray the cost of harbor infrastructure improvements incurred within the ~~[State.]~~ state.”

SECTION 6. The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvement projects authorized in section 7 of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement program projects, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the estimated construction period of the capital improvement project for which such harbor revenue bonds are issued to establish, maintain, or increase reserves for the harbor revenue bonds or harbor revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of such bonds. The aforementioned harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues derived from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

The governor, in the governor’s discretion, is authorized to use the harbor revenue fund to finance those projects authorized in section 7 of this Act where the method of financing is designated to be by harbor revenue bond funds.

SECTION 7. The following sum, or so much thereof as may be sufficient to accomplish the purposes designated herein, are hereby appropriated or authorized, as the case may be, from the harbor revenue bond funds for the fiscal years beginning July 1, 2008, and ending June 30, 2012, and all intervening fiscal years. The sum appropriated shall be expended by the department of transportation for the purposes of this Act. The department of transportation, as expending agency, shall delegate to the Aloha Tower development corporation the implementation of the capital improvement projects authorized in this Act and subsequent acts, for the projects identified as the commercial harbors modernization plan described in chapter 206J, Hawaii Revised Statutes. After approval of the project by the director of transportation and the governor, the expending authority for the approved projects shall be delegated to the Aloha Tower development corporation. The authorized capital improvement projects are:

1. HMP - Kapalama military reservation improvements, Honolulu harbor, Oahu



- Design and construction for the development of a new container terminal facility.
2. HMP – Kalaeloa Barbers Point harbor infrastructure improvements, Oahu  
Design of utility and infrastructure improvements.
  3. HMP – Kalaeloa Barbers Point harbor fuel pier improvements, Oahu  
Design of new fuel pier and other site-related improvements.
  4. HMP – Pier 4 interisland cargo terminal, Hilo harbor, Hawaii  
Design of additional interisland cargo terminal areas including a pier, yard, roadways, and utilities.
  5. HMP – Kahului harbor land acquisition and improvements, Maui  
Purchase of additional land and subsequent design of improvements for the acquired land.
  6. HMP – Hana harbor, Maui  
Development of infrastructure, demolition, as necessary, and expansion of facilities  
Total funding \$20,000,000
  7. HMP – West harbor barge/ferry slip, Kahului harbor, Maui  
Design for a new West harbor barge/ferry slip and associated site work improvements.
  8. HMP – West harbor dredging and breakwater, Kahului harbor, Maui  
Design for West harbor breakwater, dredging, and associated improvements.
  9. HMP – West harbor cruise terminal, Kahului harbor, Maui  
Design of a cruise terminal including paving, utilities, security, and other site work improvements.
  10. HMP – East harbor breakwater, Kahului harbor, Maui  
Design of the East harbor breakwater and related improvements.
  11. HMP – Pier 2 improvements, Kahului harbor, Maui  
Design of improvements to the pier, including strengthening, bollard replacement, dredging, and environmental permitting.
  12. HMP – Kawaihae harbor development plan, Hawaii  
Development plan for improving new terminal cargo facilities at Kawaihae harbor.
  13. HMP – Pier 2 terminal improvements, Kawaihae harbor, Hawaii  
Design and construction of terminal improvements, including paving, utilities, relocation of the harbor agent’s office, and interim ferry improvements.
  14. HMP – Pier 4, Kawaihae harbor, Hawaii  
Design of a multi-user pier 4 and associated site work.
  15. HMP – Multi-user pier 4, Nawiliwili harbor  
Design of new pier improvements and related site and utility work.
  16. HMP – Construction management support, statewide  
Construction consultant services during construction of harbors modernization plan projects at harbor facilities statewide.
  17. HMP – Harbors division capital improvement program staff cost, statewide  
Costs related to wages and fringe benefits for permanent harbors modernization plan project-funded positions.

The appropriations made for capital improvement projects authorized by this Act shall not lapse unless unencumbered as of June 30, 2012. All appropriations which are unencumbered as of June 30, 2012, shall lapse as of that date.

## PART II

SECTION 8. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§266- Hana harbor; jurisdiction.** Notwithstanding any law to the contrary, the department of transportation shall have jurisdiction and administrative authority over Hana harbor, excluding its small boat ramp facility. The Hana harbor small boat ramp facility shall remain under the jurisdiction and administrative authority of the department of land and natural resources.”

SECTION 9. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of land and natural resources relating to the functions transferred to the department of transportation shall be transferred with the functions to which they relate.

SECTION 10. The jurisdiction, functions, powers, duties, and authority exercised by the department of land and natural resources pursuant to chapter 200, Hawaii Revised Statutes, relating to the Hana harbor, excluding its small boat ramp facility, shall be transferred to and conferred upon the department of transportation by this Act and shall be performed and enforced in the same manner as previously authorized, entitled, or obligated except as otherwise authorized, directed, or instructed by this Act.

The department of transportation shall succeed to all of the rights and powers previously exercised, and all of the duties and obligations incurred, by the department of land and natural resources in the exercise of the functions, powers, duties, and authority transferred, whether such functions, powers, duties, and authority are mentioned in or granted in any law, contract, or other document.

All rules, policies, procedures, guidelines, and other material adopted or developed by the department of land and natural resources to implement the provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the department of transportation by this Act, shall remain in full force and effect until amended or repealed by the department of transportation pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of land and natural resources or chairperson of the board of land and natural resources in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of transportation or director of transportation as appropriate.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of land and natural resources pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the department of transportation by this Act, shall remain in full force and effect. Every reference to the department of land and natural resources or the chairperson of the board of land and natural resources therein shall be construed as a reference to the department of transportation or the director of transportation as appropriate.

SECTION 11. All executive orders, revocable permits, easements, and rights of entry for the use of state lands issued and granted to the department of land and natural resources for use in connection with Hana harbor, excluding its small boat ramp facility, shall be withdrawn or terminated and appropriate land disposition for use in connection with Hana harbor, excluding its small boat ramp facility, shall be made by the department of transportation, as appropriate, subsequent to the

## ACT 201

transfer of Hana harbor, excluding its small boat ramp facility, to the department of transportation.

SECTION 12. All acts passed by the legislature during this regular session of 2008, whether enacted before or after the effective date of this Act shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 13. This Act shall be liberally construed in order to accomplish the purposes set forth herein.

### PART III

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 15. This Act shall take effect on July 1, 2008; provided that:

- (1) The amendments to section 206J-5.5, Hawaii Revised Statutes, in section 5 of this Act shall be repealed on June 30, 2016, and section 206J-5.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and
- (2) On June 30, 2016, any moneys or funds under the management of the harbors modernization group pursuant to section 206J-5.5, Hawaii Revised Statutes, shall be deposited into the department of transportation harbor special fund.

(Approved June 20, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 201

H.B. NO. 2698

A Bill for an Act Relating to Court-Appointed Counsel and Guardians Ad Litem in Family Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 571-87, Hawaii Revised Statutes, is amended to read as follows:

#### **“§571-87 Appointment of counsel and guardian ad litem; compensation.**

(a) When it appears to a judge that a person requesting the appointment of counsel satisfies the requirements of chapter 802 for determination of indigency, or the court in its discretion appoints counsel under chapters 587 and 346, part X, or that a person requires appointment of a guardian ad litem, the judge shall appoint counsel or a guardian ad litem to represent the person at all stages of the proceedings, including appeal, if any. Appointed counsel and the guardian ad litem shall receive reasonable compensation for necessary expenses, including travel, the amount of which shall be determined by the court, and reasonable fees pursuant to ~~[subsection]~~ subsections (b) ~~[-]~~ and (c). All of these expenses and fees shall be certified by the court and paid upon vouchers approved by the judiciary and warrants drawn by the comptroller.

(b) The court shall determine the amount of reasonable compensation paid to appointed counsel and guardian ad litem, based on the ~~[rate of \$90 an hour for legal services, and \$60 an hour for non legal services; provided that the]~~ following rates:

- (1) \$90 an hour for in-court services provided by an attorney licensed to practice law in the state; and
- (2) \$60 an hour for:
  - (A) Out-of-court services provided by an attorney licensed to practice law in the state; and
  - (B) All services provided by a person who is not an attorney licensed to practice law in the state, whether performed in-court or out-of-court.
- (c) The maximum allowable fee shall not exceed the following schedule:
  - (1) Cases arising under chapters 587 and 346, part X:
    - (A) Predisposition ..... \$3,000;
    - (B) Postdisposition review hearing..... \$1,000;
  - (2) Cases arising under chapters 560, 571, 580, and 584 ..... \$3,000.

Payments in excess of any maximum provided for under paragraphs (1) and (2) may be made whenever the court in which the representation was rendered certifies, based upon representations of extraordinary circumstances, attested to by the applicant, that the amount of the excess payment is necessary to provide fair compensation in light of those circumstances, and the payment is approved by the administrative judge of that court.

(d) Nothing in this section shall preclude the judiciary from contracting for court-appointed counsel and guardian ad litem services pursuant to chapter 103D and based on contract amounts guided by the rates in subsection (b)."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2008.

(Approved June 24, 2008.)

**ACT 202**

S.B. NO. 2838

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to:

- (1) Allow an individual taxpayer who files an electronic income tax return to request the department of taxation to electronically deposit the taxpayer's income tax refund into a maximum of three checking or savings accounts; and
- (2) Require the director of taxation to continue to visit low-income communities to assist in the preparation of tax filings.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§235- Refund splitting.** (a) Any individual taxpayer required to make a return under this chapter shall be entitled to direct the deposit of an income tax refund into a maximum of three checking or savings accounts at a financial institution; provided that a taxpayer designating the direct deposit shall have electronically filed the

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taxpayer’s return for federal and state income taxes and made a similar direct deposit electronic designation to the same checking or savings accounts on the electronic return.

(b) The department of taxation shall be authorized to modify and revise its returns and computer systems to carry out the purposes of this section.”

SECTION 3. Section 26-10, Hawaii Revised Statutes, is amended to read as follows:

“**§26-10 Department of taxation.** (a) The department of taxation shall be headed by a single executive to be known as the director of taxation.

(b) The department shall administer and enforce the tax revenue laws of the State and collect all taxes and other payments payable thereunder.

(c) The director of taxation shall visit low-income communities to assist taxpayers in the preparation of tax filings. The qualification of and the visitation to specific low-income communities shall be at the discretion of the director; provided that the visitation shall be on an annual basis and statewide.

(d) There shall be within the department of taxation a board of review for each taxation district and a tax appeal court. The composition of each board of review and the tax appeal court and its respective functions, duties, and powers shall be as heretofore provided by law for the boards of review and tax appeal court existing immediately prior to November 25, 1959.

(e) The functions and authority heretofore exercised by the office of tax commissioner as heretofore constituted are transferred to the department of taxation established by this chapter.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2007.

(Approved June 24, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 203**

S.B. NO. 2825

A Bill for an Act Relating to Procurement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 103D-206, Hawaii Revised Statutes, is amended to read as follows:

“**§103D-206 Additional duties of the administrator of the procurement office.** In addition to the duties referred to in section 103D-205, the administrator shall:

- (1) Perform periodic review of the procurement practices of all governmental bodies;
- (2) Assist, advise, and guide governmental bodies in matters relating to procurement;

- (3)<sup>1</sup> Determine corrective actions; provided that if a procurement officer under the jurisdiction of the administrator of the state procurement office or a chief procurement officer of any of the other state entities under section 103D-203, fails to comply with any determination rendered by the administrator within thirty days from the date of the issuance of the determination, or longer if permitted by the administrator upon request by the procurement officer or a chief procurement officer, the procurement officer or chief procurement officer shall be subject to an administrative fine under section 103D-106, for every day of noncompliance;
- ~~(3)~~ (4) Develop and administer a statewide procurement orientation and training program;
- ~~(4)~~ (5) Develop, distribute, and maintain a procurement manual for all state procurement officials; and
- ~~(5)~~ (6) Develop, distribute, and maintain a procurement guide for vendors wishing to do business with the State and its counties.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2009.

(Approved June 24, 2008.)

#### Note

1. Should be underscored.

## ACT 204

S.B. NO. 644

A Bill for an Act Relating to Energy Resources.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii’s economic viability is dependent on the availability of affordable energy pricing. In early 2008, the price of crude oil surpassed the \$100 per barrel mark from the 2007 annual average of \$65 per barrel, burdening Hawaii’s residents and businesses with increasingly high electricity and gasoline costs.

Recognizing the critical importance of energy to the State, the legislature in 1976 enacted Act 189 establishing state income tax credits to encourage private investment in renewable energy systems among other measures, and these incentives have proven successful, beneficial, and cost effective. The original Act has been amended 11 times, varying credit rates, applicability, and duration, demonstrating that past progress and prior accomplishments in energy sustainability confer no license for complacency. The legislature finds, in fact, fossil fuel imports now account for a greater impact upon Hawaii’s economy than at any prior time in the past, substantially exceeding that of every other state despite the fact that we are blessed with the greatest number of renewable energy resources in the nation.

According to the January 2002 report of the energy-efficiency policy task force, in 2001 when oil prices averaged \$23 per barrel, the State of Hawaii refunded an estimated \$2,765,000 to 2,500 solar thermal system purchasers. This spending was estimated to have led to the following economic outcomes:

- (1) Support for 300 jobs each year that the energy conservation income tax credit remained at a 35 per cent level and creation of 64 new jobs for

every 2,500 new systems installed, a job impact that increased in relation to the number of systems continuously installed; and

- (2) A return to the State of \$5,200,000 in tax revenues for every 2,500 systems installed over the 25-year life of these systems, a revenue impact that increased in relation to the number of systems continuously installed. For example, if the number of systems installed each year grows to 5,000, it was predicted that \$10,400,000 in tax revenue would be generated over the life of these systems at current tax incentive levels.

However, the legislature finds that, with crude oil prices rising from \$65 to over \$100 per barrel in less than one year and with no relief under the State's direct control and jeopardizing the State's economic viability, the State must seriously consider requiring the installation of solar water heater systems in all new single-family dwellings constructed after December 31, 2009, to accelerate the installation of this type of energy saving device to benefit the owners and renters of newly constructed homes. A government mandate of this technology in new home construction effectively shifts from government investment in this technology via tax credits to a required investment by the private sector that will result in greater benefit to the public at large through the prudent investment in this type of renewable energy saving device.

The legislature finds that a conventional electric water tank accounts for 30 to 35 per cent of a home's electric bill. It is estimated that the savings from a home's electricity bill through the installation of a solar water heater system could result in the system being paid off in eight to ten years without a state tax incentive. If oil prices continue to rise, it is possible that energy savings may pay for the system even sooner. Furthermore, if the expense of the installation of a solar water heater system is included in the mortgage of a new home, given the high and unpredictable cost of oil, the savings from the lowered electricity costs may exceed the additional monthly payments for the solar water heater system, which itself has the added benefit of being an allowable tax deductible expense that may also be eligible for a federal renewable energy tax credit. Therefore, the legislature finds that with a solar water heater system mandate, and with a properly sized and installed solar water heater system, a household can increase its disposable income through this type of prudent, energy saving investment.

The legislature further finds that the favorable impact of this policy on the environment is undeniable. In 2006, there were 5,700 new residences constructed; assuming that the number of new single-homes constructed remains approximately the same, this would amount to over 10,260 tons of greenhouse gas emissions avoided per year.

The legislature recognizes and finds that the discontinuation of the tax credit for installation of solar energy water heating devices for homes with building permits issued prior to January 1, 2010, would remove an important financial incentive for the installation of these devices where the upfront cost, when not rolled into a mortgage, may be cost prohibitive. The availability of the tax credit, in this situation, has proven to be beneficial to the occupant of the home where the device is installed and also has provided a positive revenue impact to the State. Furthermore, the legislature has provided a mechanism for the establishment of other demand side incentives and benefits through the public benefits fund under part VII, chapter 269, Hawaii Revised Statutes. The legislature is confident that the transition provisions established in section 269-124, Hawaii Revised Statutes, will facilitate the provision of suitable demand-side management and energy-efficiency programs for energy consumers.

Accordingly, the purpose of this Act is to increase the use of renewable energy to protect our environment, reduce pollution, make housing more affordable, and enhance Hawaii's local economy by:

- (1) Requiring the installation of solar water heater systems, comparable renewable energy systems, or demand gas water heaters in all new residential development projects constructed after January 1, 2010; and
- (2) Restricting the solar thermal energy system tax credit available for single-family residential properties to those properties for which building permits were issued prior to January 1, 2010.

SECTION 2. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§196- Solar water heater system required for new single-family residential construction.** (a) On or after January 1, 2010, no building permit shall be issued for a single-family dwelling that does not include a solar water heater system that meets the standards established pursuant to section 269- , unless the energy resources coordinator approves a variance. A variance shall only be approved if an architect or engineer licensed under chapter 464 attests that:

- (1) Installation is impracticable due to poor solar resource;
- (2) Installation is cost-prohibitive based upon a life cycle cost-benefit analysis that incorporates the average residential utility bill and the cost of the new solar water heater system with a life cycle that does not exceed fifteen years;
- (3) A substitute renewable energy technology system, as defined in section 235-12.5, is used as the primary energy source for heating water; or
- (4) A demand water heater device approved by Underwriters Laboratories, Inc., is installed; provided that at least one other gas appliance is installed in the dwelling. For the purposes of this paragraph, “demand water heater” means a gas-tankless instantaneous water heater that provides hot water only as it is needed.

(b) A request for a variance shall be submitted to the energy resources coordinator on an application prescribed by the energy resources coordinator and shall include, but not be limited to, a description of the location of the property and justification for the approval of a variance using the criteria established in subsection (a). A variance shall be deemed approved if not denied within thirty working days after receipt of the variance application.

(c) Nothing in this section shall preclude any county from establishing procedures and standards required to implement this section.

(d) Nothing in this section shall preclude participation in any utility demand-side management program or public benefits fund under part VII of chapter 269.”

SECTION 3. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§269- Solar water heater system standards.** Not later than July 1, 2009, or as soon as reasonably practicable, the public utilities commission shall adopt or establish by rule, tariff, or order, standards for solar water heater systems to include, but not be limited to, specifications for the performance, materials, components, durability, longevity, proper sizing, installation, and quality to promote the objectives of section 269-124.”

SECTION 4. Section 235-12.5, Hawaii Revised Statutes, is amended to read as follows:

**“§235-12.5 Renewable energy technologies; income tax credit.** (a) When the requirements of subsection (c) are met, each individual or corporate taxpayer that



files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service in the State by a taxpayer during the taxable year. This credit shall be available for systems installed and placed in service in the State after June 30, 2003. The tax credit may be claimed as follows:

- (1) Solar thermal energy systems for:
  - (A) Single-family residential property[~~:]~~ for which a building permit was issued prior to January 1, 2010: thirty-five per cent of the actual cost or \$2,250, whichever is less;
  - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and
  - (C) Commercial property: thirty-five per cent of the actual cost or \$250,000, whichever is less;
- (2) Wind-powered energy systems for:
  - (A) Single-family residential property: twenty per cent of the actual cost or \$1,500, whichever is less;
  - (B) Multi-family residential property: twenty per cent of the actual cost or \$200 per unit, whichever is less; and
  - (C) Commercial property: twenty per cent of the actual cost or \$500,000, whichever is less; and
- (3) Photovoltaic energy systems for:
  - (A) Single-family residential property: thirty-five per cent of the actual cost or \$5,000, whichever is less;
  - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and
  - (C) Commercial property: thirty-five per cent of the actual cost or \$500,000, whichever is less;

provided that multiple owners of a single system shall be entitled to a single tax credit; and provided further that the tax credit shall be apportioned between the owners in proportion to their contribution to the cost of the system.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every eligible renewable energy technology system that is installed and placed in service in the State by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

(b) For the purposes of this section:

“Actual cost” means costs related to the renewable energy technology systems under subsection (a), including accessories and installation, but not including the cost of consumer incentive premiums unrelated to the operation of the system or offered with the sale of the system and costs for which another credit is claimed under this chapter.

“Renewable energy technology system” means a new system that captures and converts a renewable source of energy, such as wind, heat (solar thermal), or light (photovoltaic) from the sun into:

- (1) A usable source of thermal or mechanical energy;
- (2) Electricity; or
- (3) Fuel.

“Solar or wind energy system” means any identifiable facility, equipment, apparatus, or the like that converts insolation or wind energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation.

(c) For taxable years beginning after December 31, 2005, the dollar amount of any utility rebate shall be deducted from the cost of the qualifying system and its installation before applying the state tax credit.

(d) The director of taxation shall prepare any forms that may be necessary to claim a tax credit under this section, including forms identifying the technology type of each tax credit claimed under this section, whether for solar thermal, photovoltaic from the sun, or wind. The director may also require the taxpayer to furnish reasonable information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(e) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of the credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for the tax credit under this section, including amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with this subsection shall constitute a waiver of the right to claim the credit.

(f) By or before December, 2005, to the extent feasible, using existing resources to assist the energy-efficiency policy review and evaluation, the department shall assist with data collection on the following:

- (1) The number of renewable energy technology systems that have qualified for a tax credit during the past year by:
  - (A) Technology type (solar thermal, photovoltaic from the sun, and wind); and
  - (B) Taxpayer type (corporate and individual); and
- (2) The total cost of the tax credit to the State during the past year by:
  - (A) Technology type; and
  - (B) Taxpayer type.

(g) For systems installed and placed in service in 2009, no residential home developer shall be entitled to claim the credit under subsections (a)(1)(A), (a)(2)(A), and (a)(3)(A). A residential home developer is defined as a person who holds more than one residential dwelling for sale as inventory."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon approval; provided that section 4 shall apply to taxable years beginning after December 31, 2008.

(Approved June 26, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 205

H.B. NO. 3331

A Bill for an Act Relating to Condominiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-121.5, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-121.5 Mediation; condominium management dispute resolution; request for hearing; hearing.** (a) If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners’ declaration, bylaws, ~~or~~ house rules, or a matter involving section 514A-82(b)(1) to (13), 514A-82.1, 514A-82.15, 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2, 514A-83.3, 514A-83.4, 514A-83.5, 514A-84, 514A-84.5, or 514A-92.5, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation~~;~~, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If an apartment owner or the board of directors refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorney’s fees.

(b) If a dispute is not resolved by mediation as provided in this section, including for the reason that a unit owner or the board of directors refuses to participate in the mediation of a particular dispute, any party to that proposed or terminated mediation may file for arbitration no sooner than thirty days from the termination date of the mediation; provided that the termination date shall be deemed to be the earlier of:

- (1) The last date the parties all met in person with the mediator;
- (2) The date that a unit owner or a board of directors refuses in writing to mediate a particular dispute; or
- (3) Thirty days after a unit owner or a board of directors receives a written or oral request to engage in mediation and mediation does not occur within fifty-one days after the date of the request.

~~(b)~~ (c) If a dispute is not resolved by mediation as provided in subsection (a), ~~[in addition to any other legal remedies that may be available,]~~ including for the reason that a unit owner or the board of directors refuses to participate in the mediation of a particular dispute, any party to that [participated in the] proposed or terminated mediation may file a request for a hearing with the office of administrative hearings, department of commerce and consumer affairs, as follows:

- (1) The party requesting the hearing ~~[must]~~ shall be a board of directors of a duly registered association of apartment owners, or an apartment owner that is a member of ~~[a duly registered]~~ an association~~;~~ duly registered pursuant to section 514A-95.1;
- (2) The request for hearing ~~[must]~~ shall be filed within thirty days from the ~~[final day of mediation;]~~ termination date as specified in writing by the mediation service; provided that the termination date shall be deemed to be the earlier of:

- (A) The last date the parties all met in person with the mediator;
- (B) The date that a unit owner or a board of directors refuses in writing to mediate a particular dispute; or
- (C) Thirty days after a unit owner or a board of directors receives a written or oral request to engage in mediation and mediation does not occur within fifty-one days after the date of the request;

- (3) The request for hearing ~~[must]~~ shall name one or more parties ~~[that participated]~~ in the proposed or terminated mediation as an adverse party and identify the statutory provisions in dispute; and
- (4) The subject matter of the hearing before the ~~[hearing]~~ hearings officer may include any matter that was the subject of the mediation pursuant to subsection (a).

~~(e)~~ (d) For purposes of this section, the office of administrative ~~[hearing]~~ hearings for the department of commerce and consumer affairs shall accept no more than thirty requests for hearing per fiscal year under this section.

~~[(d)]~~ (e) The party requesting the hearing shall pay a filing fee of \$25 to the department of commerce and consumer affairs, and the failure to do so shall result in the request for hearing being rejected for filing. All other parties shall file a response, accompanied by a filing fee of \$25 to the department of commerce and consumer affairs, within twenty days of being served with the request for hearing.

~~[(e)]~~ (f) The hearings officers appointed by the director of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review any request for hearing filed under subsection ~~[(b)-]~~ (c). The hearings officers shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue written decisions that shall be final and conclusive, unless a party adversely affected by the decision files an appeal in the circuit court under section 91-14.

~~[(f)]~~ (g) Chapter 16-201, Hawaii Administrative Rules, shall govern all proceedings brought under ~~[this section-]~~ subsection (c). The burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence.

~~[(g)]~~ (h) Hearings to review and make determinations upon any requests for hearings filed under subsection ~~[(b)-]~~ (c) shall commence within sixty days following the receipt of the request for hearing. The ~~[hearing]~~ hearings officer shall issue written findings of fact, conclusions of law, and an order as expeditiously as practicable after the hearing has been concluded.

~~[(h)]~~ (i) Each party to the hearing shall bear the party's own costs, including attorney's fees, unless otherwise ordered by the ~~[hearing]~~ hearings officer.

~~[(i)]~~ (j) Any party to a ~~[proceedings under this section]~~ proceeding brought under subsection (c) who is aggrieved by a final decision of a hearings officer may apply for judicial review of that decision pursuant to section 91-14; provided that any party seeking judicial review pursuant to section 91-14 shall be responsible for the costs of preparing the record on appeal, including the cost of preparing the transcript of the hearing.

~~[(j)]~~ (k) The department of commerce and consumer affairs may adopt rules and forms, pursuant to chapter 91, to effectuate the purpose of this section and to implement its provisions."

SECTION 2. Section 514B-161, Hawaii Revised Statutes, is amended to read as follows:

**"§514B-161 Mediation[-]; condominium management dispute resolution; request for hearing; hearing.** (a) If ~~[an apartment]~~ a unit owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the ~~[association of apartment owners']~~ association's declaration, bylaws, or house rules, or a matter involving part VI, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If a ~~[party]~~ unit owner or the board of directors refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.

(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

- (1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;
- (2) Actions to collect assessments;
- (3) Personal injury claims; or

- (4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties.

(d) If a dispute is not resolved by mediation as provided in this section, including for the reason that a unit owner or the board of directors refuses to participate in the mediation of a particular dispute, any party to that proposed or terminated mediation may file for arbitration no sooner than thirty days from the termination date of the mediation; provided that the termination date shall be deemed to be the earlier of:

- (1) The last date the parties all met in person with the mediator;
- (2) The date that a unit owner or a board of directors refuses in writing to mediate a particular dispute; or
- (3) Thirty days after a unit owner or a board of directors receives a written or oral request to engage in mediation and mediation does not occur within fifty-one days after the date of the request.

(e) If a dispute is not resolved by mediation as provided in subsection (a), including for the reason that a unit owner or the board of directors refuses to participate in the mediation of a particular dispute, any party to that proposed or terminated mediation may file a request for a hearing with the office of administrative hearings of the department of commerce and consumer affairs, as follows:

- (1) The party requesting the hearing shall be a board of directors of a duly registered association or a unit owner that is a member of a duly registered association pursuant to section 514B-103;
- (2) The request for hearing shall be filed within thirty days from the termination date as specified in writing by the mediator; provided that the termination date shall be deemed to be the earlier of:
  - (A) The last date the parties all met in person with the mediator;
  - (B) The date that a unit owner or a board of directors refuses in writing to mediate a particular dispute; or
  - (C) Thirty days after a unit owner or a board of directors receives a written or oral request to engage in mediation and mediation does not occur within fifty-one days after the date of the request;
- (3) The request for hearing shall name one or more parties in the proposed or terminated mediation as an adverse party and identify the statutory provisions in dispute; and
- (4) The subject matter of the hearing before the hearings officer may include any matter that was the subject of the mediation pursuant to subsection (a); provided that if mediation does not first occur, the subject matter hearings officer shall include any matter that was identified in the request for mediation.

(f) For purposes of this section, the office of administrative hearings of the department of commerce and consumer affairs shall accept no more than thirty requests for hearing per fiscal year under this section.

(g) The party requesting the hearing shall pay a filing fee of \$25 to the department of commerce and consumer affairs, and the failure to do so shall result in the request for hearing being rejected for filing. All other parties shall file a response, accompanied by a filing fee of \$25, with the department of commerce and consumer affairs within twenty days of being served with the request for hearing.

(h) The hearings officers appointed by the director of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review any request for hearing filed under subsection (e). The hearings officers shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue written decisions that shall be final and conclusive, unless a party adversely affected by the decision files an appeal in the circuit court under section 91-14.

(i) The department of commerce and consumer affairs' rules of practice and procedure shall govern all proceedings brought under subsection (e). The burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence.

(j) Hearings to review and make determinations upon any requests for hearings filed under subsection (e) shall commence within sixty days following the receipt of the request for hearing. The hearings officer shall issue written findings of fact, conclusions of law, and an order as expeditiously as practicable after the hearing has been concluded.

(k) Each party to the hearing shall bear the party's own costs, including attorney's fees, unless otherwise ordered by the hearings officer.

(l) Any party to a proceeding brought under subsection (e) who is aggrieved by a final decision of a hearings officer may apply for judicial review of that decision pursuant to section 91-14; provided that any party seeking judicial review pursuant to section 91-14 shall be responsible for the costs of preparing the record on appeal, including the cost of preparing the transcript of the hearing.

(m) The department of commerce and consumer affairs may adopt rules and forms, pursuant to chapter 91, to effectuate the purpose of this section and to implement its provisions."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval, and shall be repealed on June 30, 2009.

(Approved June 27, 2008.)

## ACT 206

S.B. NO. 2159

A Bill for an Act Relating to Professions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**"§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs. [(a)]** Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed on December 31, 2008. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

**[(b) Chapter 453D (licensed mental health counselors) shall be repealed on December 31, 2008.]"**

SECTION 2. Section 431M-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read as follows:

“Licensed mental health counselor” means a person:

- (1) Who engages in the practice of mental health counseling and uses the title of licensed mental health counselor;
- (2) Who is licensed in mental health counseling practice pursuant to chapter 453D; and
- (3) Whose license is in effect and not revoked or suspended.”

2. By amending the definition of “alcohol or drug dependence outpatient services” to read:

“Alcohol or drug dependence outpatient services” means alcohol or drug dependence nonresidential treatment provided on an ambulatory basis to patients with alcohol or drug dependence problems that includes interventions prescribed and performed by qualified physicians, psychologists, licensed clinical social workers, marriage and family therapists, licensed mental health counselor, or advanced practice registered nurses. This definition shall not imply a broadening of the scope of or granting of prescriptive authority privileges, except as otherwise allowed pursuant to chapter 457.”

3. By amending the definition of “day treatment services” to read:

“Day treatment services” means treatment services provided by a hospital, mental health outpatient facility, or nonhospital facility to patients who, because of their conditions, require more than periodic hourly service. Day treatment services shall be prescribed by a physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse, and carried out under the supervision of a physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse. Day treatment services require less than twenty-four hours of care and a minimum of three hours in any one day.”

4. By amending the definition of “mental health outpatient services” to read:

“Mental health outpatient services” means mental health nonresidential treatment provided on an ambulatory basis to patients with mental illness that includes interventions prescribed and performed by a physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse.”

5. By amending the definition of “partial hospitalization services” to read:

“Partial hospitalization services” means treatment services, including in-hospital treatment services or benefits, provided by a hospital or mental health outpatient facility to patients who, because of their conditions, require more than periodic hourly service. Partial hospitalization services shall be prescribed by a physician or psychologist, and may be prescribed by a licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse in consultation with a physician or psychologist. Partial hospitalization services require less than twenty-four hours of care and a minimum of three hours in any one day.”

6. By amending the definition of “qualified” to read:

“Qualified” means:

- (1) Having skill in the diagnosis or treatment of substance use disorders, based on a practitioner’s credentials, including but not limited to professional education, clinical training, licensure, board or other certification, clinical experience, letters of reference, other professional qualifications, and disciplinary action; or

- (2) Being a licensed physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse, and certified pursuant to chapter 321.”

7. By amending the definition of “treatment episode” to read:

““Treatment episode” means one admission to an accredited hospital or non-hospital facility, or office of a qualified physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse for treatment of alcohol or drug dependence, or both, as stipulated in a prescribed treatment plan and that would generally produce remission in those who complete the treatment. The prescribed treatment plan may include the provision of substance abuse services in more than one location and may include in-hospital, nonhospital residential, day treatment, or alcohol or drug dependence outpatient services, or any combination thereof. An admission for only detoxification services shall not constitute a treatment episode.”

SECTION 3. Section 431M-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Covered benefits for alcohol dependence, drug dependence, or mental illness insurance policies, hospital or medical service plan contracts, and health maintenance organization health plan contracts shall be limited to those services certified by the insurance or health care plan carrier’s physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse as medically or psychologically necessary at the least restrictive appropriate level of care.”

SECTION 4. Section 431M-4, Hawaii Revised Statutes, is amended to read as follows:

**“§431M-4 Mental illness, alcohol and drug dependence benefits.** (a) The covered benefit under this chapter shall not be less than thirty days of in-hospital services per year. Each day of in-hospital services may be exchanged for two days of nonhospital residential services, two days of partial hospitalization services, or two days of day treatment services. Visits to a physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse shall not be less than thirty visits per year to hospital or nonhospital facilities or to mental health outpatient facilities for day treatment or partial hospitalization services. Each day of in-hospital services may also be exchanged for two outpatient visits under this chapter; provided that the patient’s condition is such that the outpatient services would reasonably preclude hospitalization. The total covered benefit for outpatient services in subsections (b) and (c) shall not be less than twenty-four visits per year; provided that coverage of twelve of the twenty-four outpatient visits shall apply only to the services under subsection (c). The other covered benefits under this chapter shall apply to any of the services in subsection (b) or (c). In the case of alcohol and drug dependence benefits, the insurance policy may limit the number of treatment episodes but may not limit the number to less than two treatment episodes per lifetime. Nothing in this section shall be construed to limit serious mental illness benefits.

- (b) Alcohol and drug dependence benefits shall be as follows:

- (1) Detoxification services as a covered benefit under this chapter shall be provided either in a hospital or in a nonhospital facility that has a written affiliation agreement with a hospital for emergency, medical, and mental health support services. The following services shall be covered under detoxification services:



- (A) Room and board;
- (B) Diagnostic x-rays;
- (C) Laboratory testing; and
- (D) Drugs, equipment use, special therapies, and supplies.

Detoxification services shall be included as part of the covered in-hospital services, but shall not be included in the treatment episode limitation, as specified in subsection (a);

- (2) Alcohol or drug dependence treatment through in-hospital, nonhospital residential, or day treatment substance abuse services as a covered benefit under this chapter shall be provided in a hospital or nonhospital facility. Before a person qualifies to receive benefits under this subsection, a qualified physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse shall determine that the person suffers from alcohol or drug dependence, or both; provided that the substance abuse services covered under this paragraph shall include those services that are required for licensure and accreditation and shall be included as part of the covered in-hospital services as specified in subsection (a). Excluded from alcohol or drug dependence treatment under this subsection are detoxification services and educational programs to which drinking or drugged drivers are referred by the judicial system and services performed by mutual self-help groups;
  - (3) Alcohol or drug dependence outpatient services as a covered benefit under this chapter shall be provided under an individualized treatment plan approved by a qualified physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse and shall be services reasonably expected to produce remission of the patient's condition. An individualized treatment plan approved by a marriage and family therapist, licensed mental health counselor, licensed clinical social worker, or an advanced practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist. Services covered under this paragraph shall be included as part of the covered outpatient services as specified in subsection (a); and
  - (4) Substance abuse assessments for alcohol or drug dependence as a covered benefit under this section for a child facing disciplinary action under section 302A-1134.6 shall be provided by a qualified physician, psychologist, licensed clinical social worker, advanced practice registered nurse, or certified substance abuse counselor. The certified substance abuse counselor shall be employed by a hospital or nonhospital facility providing substance abuse services. The substance abuse assessment shall evaluate the suitability for substance abuse treatment and placement in an appropriate treatment setting.
- (c) Mental illness benefits.
- (1) Covered benefits for mental health services set forth in this subsection shall be limited to coverage for diagnosis and treatment of mental disorders. All mental health services shall be provided under an individualized treatment plan approved by a physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse and must be reasonably expected to improve the patient's condition. An individualized treatment plan approved by a licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or an advanced

practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist;

- (2) In-hospital and nonhospital residential mental health services as a covered benefit under this chapter shall be provided in a hospital or a non-hospital residential facility. The services to be covered shall include those services required for licensure and accreditation, and shall be included as part of the covered in-hospital services as specified in subsection (a);
- (3) Mental health partial hospitalization as a covered benefit under this chapter shall be provided by a hospital or a mental health outpatient facility. The services to be covered under this paragraph shall include those services required for licensure and accreditation and shall be included as part of the covered in-hospital services as specified in subsection (a); and
- (4) Mental health outpatient services shall be a covered benefit under this chapter and shall be included as part of the covered outpatient services as specified in subsection (a).”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 27, 2008.)

#### Notes

1. Not in HRS.
2. So in original.

## ACT 207

H.B. NO. 2863

A Bill for an Act Relating to Renewable Energy.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to establish a renewable energy facility siting process for state and county permits required for the siting, development, construction, and operation of a new renewable energy facility of at least two hundred megawatts of electricity. The legislature finds that coordinating the process for required permits is in the State’s interests to reduce Hawaii’s over-dependence on fossil fuels and meet Hawaii’s energy self-sufficiency goals and mandates and will encourage the timely development of renewable energy projects that utilize Hawaii’s indigenous renewable energy resources for the health, safety, and welfare of the residents of Hawaii.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### “CHAPTER RENEWABLE ENERGY FACILITY SITING PROCESS

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires: “County agency” means a department, division, office, officer, agency, or other organization of a county government, including a county council.

“County law” means a county charter provision, ordinance, or administrative rule.

“County permit” means a permit that is subject to approval by a county agency pursuant to federal, state, or county law.

“Delegated environmental permit” means an air or water quality permit subject to issuance by the department of health under authority delegated by the United States Environmental Protection Agency.

“Energy resources coordinator” or “coordinator” means the energy resources coordinator as designated in section 196-3.

“Permit”:

- (1) Means any approval, no matter the nomenclature, necessary for the siting, development, construction, or operation of a renewable energy facility; except that the term shall not include:
  - (A) Acceptance by an accepting authority of an environmental impact statement on a facility;
  - (B) Issuance by a county agency of a building or grading permit; or
  - (C) Approval by the public utilities commission of a power purchase agreement between a renewable energy facility and a public utility; and
- (2) Includes:
  - (A) A state land use reclassification;
  - (B) A county development, community, or community development plan amendment;
  - (C) A county zoning map amendment;
  - (D) A state conservation district use permit;
  - (E) A state special use permit for an agricultural or rural district;
  - (F) A special management area permit;
  - (G) A shoreline setback variance; and
  - (H) A grant of an easement on state or county real property.

“Permit plan” means the aggregated set of required permits for a renewable energy facility, coordinated by the department of business, economic development, and tourism.

“Power purchase agreement” means an agreement between a renewable energy facility owner and a public utility on the sale of electricity produced by the facility to the public utility.

“Renewable energy” has the same meaning as defined under section 269-91.

“Renewable energy facility” or “facility” means a new facility located in the State with the capacity to produce from renewable energy at least two hundred megawatts of electricity. The term includes any of the following associated with the initial permitting and construction of the facility:

- (1) The land parcel on which the facility is situated;
- (2) Any renewable energy production structure or equipment;
- (3) Any energy transmission line from the facility to a public utility’s electricity transmission or distribution system;
- (4) Any on-site infrastructure; and
- (5) Any on-site building, structure, other improvement, or equipment necessary for the production of electricity or biofuel from the renewable energy site, transmission of the electricity or biofuel, or any accommodation for employees of the facility.

“State agency” means a department, division, office, agency, or other organization of the state government, but not the legislature.

“State law” means a state constitutional provision, statute, or administrative rule.

“State permit” means a permit that is subject to the approval of a state agency pursuant to federal or state law; except that the term does not include a delegated environmental permit.

**§ -2 Renewable energy facility siting process staff.** The energy resources coordinator may employ and dismiss staff without regard to chapters 76 and 89 to assist the coordinator in the implementation of this chapter. The salary of each staff member shall be set by the coordinator. Each staff member shall be entitled to participate in any public employee benefit program plan or privilege.

The coordinator may also contract persons to assist the coordinator in the implementation of this chapter.

**§ -3 General duties of the coordinator.** The coordinator shall:

- (1) Consult with appropriate state and county agencies to develop and establish a permit plan application format and procedure designed to ensure a timely review to obtain required permits and approvals for renewable energy facilities;
- (2) Receive a permit plan application, in a form as the coordinator shall prescribe, from an applicant for the approval of the siting, development, construction, and operation of a renewable energy facility, with an appropriate initial application fee as determined by the coordinator;
- (3) Identify all state and county permits necessary for approval of the renewable energy facility;
- (4) Assist in the permit plan application process by coordinating permitting processes, giving technical assistance, overseeing the creation of the permit plan, and providing general oversight to facilitate the timely review and permitting of the siting of a renewable energy facility;
- (5) Gather from the applicant any information the coordinator finds relevant and necessary for the reviewing and processing of a permit application by the federal, state, and county agencies;
- (6) Coordinate public meetings on the island where a renewable energy facility is proposed to be developed to:
  - (A) Allow members of the affected communities to provide input regarding the development of the renewable energy facility;
  - (B) Promote public awareness of the plan for the renewable energy facility in the proposed area; and
  - (C) Allow the coordinator, the applicant, and any applicable agency to gain public sentiment and input regarding the proposed development of the renewable energy facility, and incorporate the public sentiment and input into the planning of the proposed renewable energy facility; and
- (7) Work with the federal, state, and county agencies and the applicant to determine the terms and conditions of the permit plan and permits that are necessary to effectuate this chapter and to protect the public health and safety and promote the general welfare.

**§ -4 Permit plan application; coordinator; fee; pre-application conference.** (a) The coordinator shall establish and require the applicant to pay a fee for the coordinator's services in overseeing the permit plan process. The coordinator shall set the fee at an amount sufficient to cover the costs and expenses of the coordinator, coordinator's staff and any contractor contracted by the coordinator to assist the applicant, and relevant state and county agencies, if necessary, to provide input and advice on the state and county permits necessary for the facility and in obtaining the permits. Upon collection of the fee or periodically thereafter, the coordinator, if necessary, shall transmit to each relevant state or county agency the portion of the fee that reflects the cost to that state or county agency for providing its input or advice or issuing the required permits.

(b) Before accepting a permit plan application, the coordinator may hold a pre-application conference, without regard to acceptance of the final environmental impact statement, with the prospective applicant to discuss all the state and county permits necessary for the facility and notify the prospective applicant of the information that must be submitted for the necessary permits under the permit plan. After receiving a permit plan application, the coordinator shall accept the application after determining that the application is complete and complies with the permit plan format and procedure.

(c) Within ten days of acceptance of a permit plan application, the coordinator shall publish public notice of the acceptance of the application in two consecutive publications of the office of environmental quality control's environmental notice, published pursuant to section 343-3. The public notice shall include:

- (1) The name of the applicant;
- (2) The location of the proposed renewable energy facility;
- (3) A summarized description of the facility;
- (4) The state and county permits required for the facility; and
- (5) Any other information deemed necessary or desirable by the coordinator.

(d) In conjunction with the pre-application conference, the initial public meeting, and any subsequent coordinating meetings with permitting agencies, the coordinator shall compile a permit plan, which shall include:

- (1) All state and county permits needed;
- (2) All applicant information required;
- (3) A plan for permits to be processed concurrently;
- (4) A list of required state and county technical support and data required;
- (5) Agreement on timeline and coordination for potential environmental impact statements and permit concurrence, review, and issuance;
- (6) Agreement on conditions by which any timelines may be extended; and
- (7) Agreement on cost reimbursement agreement.

(e) The permit plan shall be a working document, available to the public and posted on the department of business' economic development and tourism's website, and shall be regularly updated with current information. The permit plan shall be used to promote efficiency and transparency in the permitting process and to achieve the purposes of this chapter through efficiencies in processes and procedures, including the coordinated and concurrent processing of permits where possible, while ensuring opportunities for appropriate public comment and participation, including hearings normally required for permits and mitigation of potential environmental impacts.

(f) The permit plan shall be designed to ensure that all permits identified in the permit plan shall be processed and either denied or approved no later than twelve months after the date that the project permit plan application is accepted by the coordinator, subject to any extensions that may be requested by the applicant.

(g) Each appropriate state and county agency shall diligently endeavor to process and approve or deny any permit in the permit plan no later than twelve months after a completed permit plan application is approved by the coordinator. If a permit is not approved or denied within twelve months after approval of a completed permit plan application, the permitting agency shall provide the coordinator with a report identifying diligent measures that are being taken by the agency to complete processing and action as soon as practicable. If a permitting agency fails to provide this report and if the permit has not been approved or denied within eighteen months following the approval of a completed permit plan application by the coordinator, the permit shall be deemed approved.

**§ -5 Approval of state permits.** When the coordinator accepts a permit plan application for a renewable energy facility that requires state permits, the coordinator shall facilitate the timely processing of the permit plan with the state agency or agencies responsible for approving, monitoring, and enforcing the terms and conditions of the permit in accordance with the permit plan.

**§ -6 Approval of county permits.** When the coordinator accepts a permit plan application for a renewable energy facility that requires county permits, the coordinator shall facilitate the timely processing of the permit plan with the relevant county agency or agencies responsible for approving, monitoring, and enforcing the terms and conditions of the permit in accordance with the permit plan.

**§ -7 Coordination with federal permits and delegated environmental permits.** (a) The coordinator shall establish and implement a system to coordinate the approval of required federal permits with state and county permits for a renewable energy facility. The system shall include a process for coordinating the federal environmental impact statement process with the state environmental impact statement process.

(b) The coordinator also shall establish and implement a system to coordinate the issuance of delegated environmental permits by the department of health with approval of state and county permits for a renewable energy facility.

(c) The coordinator may convene interagency working groups for the purpose of this section.

**§ -8 Environmental impact review process; applicability.** (a) Chapter 343 shall apply to any permit plan application for a renewable energy facility.

(b) Notwithstanding any provision in this chapter or in chapter 343 to the contrary, the coordinator shall not accept a permit plan application for a renewable energy facility prior to the acceptance of an environmental impact statement for the renewable energy facility. An agency may review and commence processing applications for permits for a renewable energy facility prior to the acceptance of a permit plan by the coordinator, provided that action to grant or deny a permit shall not be taken until after final acceptance of an environmental impact statement.

(c) Notwithstanding any provision of chapter 343 to the contrary, the department of business, economic development, and tourism shall be the accepting authority for any final environmental impact statement that is prepared by an applicant for any renewable energy facility under this chapter.

**§ -9 Building or grading permit required from county.** All applicable county-issued permits shall be required to grade a site or construct a structure for a renewable energy facility. The applicable county shall establish an expedited process for review and issuance of all required building or grading permits. Under the process, the county may contract with a third party to conduct the review of the permit application and require the applicant for the permit to pay the cost incurred for the third party review.

**§ -10 Public participation; public meetings.** Upon acceptance of the permit plan application for a renewable energy facility, the coordinator shall hold a public meeting on the island on which the renewable energy facility will be built. The purpose of the public meetings shall be to promote public awareness of the proposed renewable energy facility in the affected areas. The public meeting shall be an opportunity for any members of the affected community to provide input regarding the development and construction of the renewable energy facility and regarding the permit plan developed pursuant to section -4. The public meeting shall also be

an opportunity for the coordinator, the applicant, and any applicable state or county agencies to gain public and community sentiment regarding the proposed development of the renewable energy facility and incorporate the public sentiment and input into the planning of the proposed renewable energy facility.

**§ -11 Renewable energy facility siting special fund; uses.** (a) There is created within the state treasury a renewable energy facility siting special fund, which shall consist of:

- (1) Moneys appropriated to the fund by the legislature;
- (2) Permit plan application fees collected by the coordinator under this chapter; and
- (3) Moneys allotted to the fund from other sources.

(b) Moneys from the fund shall be expended by the energy resources coordinator for the purposes of section -4(a) and for the operation and administration of the renewable energy facility siting process pursuant to this chapter.

**§ -12 Rules.** The coordinator may adopt interim rules to implement this chapter without regard to the notice and public hearing requirements of section 91-3 or the small business impact review requirements of chapter 201M; provided that any amendment of the interim rules shall be subject to chapters 91 and 201M.”

SECTION 3. Section 343-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Renewable energy facility” has the same meaning as defined in section -1.”

SECTION 4. Section 269-27.2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The public utilities commission may direct public utilities that supply electricity to the public to arrange for the acquisition of and to acquire electricity generated from nonfossil fuel sources as is available from and [~~which~~] the producers [~~of same~~] are willing and able to make available to the public utilities, and to employ and dispatch the nonfossil fuel generated electricity in a manner consistent with the availability thereof to maximize the reduction in consumption of fossil fuels in the generation of electricity to be provided to the public. To assist the energy resources coordinator in effectuating the purposes of chapter , the public utilities commission may develop reasonable guidelines and timetables for the creation and implementation of power purchase agreements.”

SECTION 5. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required[-]; provided that, for an action that proposes the establishment of a renewable energy facility, a draft environmental impact statement shall be prepared at the earliest practicable time. The final approving agency for the request for approval is not required to be the accepting authority.

For environmental assessments for which a finding of no significant impact is anticipated:

- (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;
- (2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3; and

- (3) The applicant shall respond in writing to comments received during the review, and the agency shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of the agency's determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office.

The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3.

The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement.

The authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement.

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement pursuant to section 343-3.

The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination. In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision."

SECTION 6. There is appropriated out of the renewable energy facility siting special fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2008-2009 to be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2008.

(Approved July 1, 2008.)

#### Note

1. So in original.



A Bill for an Act Relating to Energy.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. Renewable energy resources offer Hawaii important economic, environmental, and energy security benefits, especially since Hawaii's dependence on petroleum is the highest in the nation, accounting for approximately 90 per cent of the State's energy needs. This high petroleum dependence makes consumers extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond Hawaii's control.

Recognizing the importance and economic and environmental benefits of increasing energy self-sufficiency, over the past four years, the legislature and the department of business, economic development, and tourism have committed to energy objectives geared toward achieving dependable, efficient, and economical statewide energy systems, increased self-sufficiency, greater energy security, and reduction of greenhouse gas emissions.

Act 272, Session Laws of Hawaii 2001, recognized the economic, environmental, and fuel diversity benefits of renewable energy resources and the need to encourage the establishment of a market for renewable energy in Hawaii using the State's renewable energy resources. Act 240, Session Laws of Hawaii 2006, provided a framework for energy self-sufficiency. The State has also committed to a renewable energy standard, where twenty per cent of electricity sold will be generated from renewable resources by the end of 2020 and has sought to encourage private sector development of renewable energy projects.

However, renewable energy projects are often complex, large-scale undertakings requiring a number of permits. The process for obtaining the necessary permits for renewable energy projects and developments and the process for meeting state, county, and federal regulations has for decades been described as overly time-consuming, cumbersome, onerous, and costly. In fact, the "Hawaii Integrated Energy Policy Report" of 1991 found that the permit and approval process required for the development and siting of energy facilities for a single project can take up to seven years to complete. Thus, the inefficiency of the permitting and development process acts as a barrier to meeting Hawaii's renewable energy goals.

Understanding that renewable energy projects can provide substantial and long-term benefits to the State and that development of renewable energy projects would further state policies of developing indigenous renewable energy resources and decreasing Hawaii's dependency on imported fossil fuels, the legislature finds that there is a need to streamline the permitting process to provide predictability and to encourage private companies to commit substantial amounts of capital, time, and effort necessary to develop such projects. Towards these ends the legislature also recognizes that investment in additional personnel is essential.

The purpose of this part is to establish a full-time, temporary renewable energy facilitator position in the department of business, economic development, and tourism.

SECTION 2. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§201-A Renewable energy facilitator; establishment; duties.** (a) There is established within the department of business, economic development, and tourism the position of renewable energy facilitator, which shall be a full-time, temporary

position exempt from chapters 76 and 89. The renewable energy facilitator shall possess a requisite level of knowledge and expertise in the areas of renewable energy, state and county permitting processes, and management necessary to carry out the duties of the position.

- (b) The renewable energy facilitator shall have the following duties:
  - (1) Facilitate the efficient permitting of renewable energy projects;
  - (2) Initiate the implementation of key renewable energy projects by permitting various efficiency improvement strategies identified by the department;
  - (3) Administer the day-to-day coordination for renewable energy projects on behalf of the department and the day-to-day operations of the renewable energy facility siting process established in H.B. No. 2863, C.D. 1,<sup>1</sup> Regular Session of 2008; and
  - (4) Submit periodic reports to the legislature on renewable energy facilitation activities and the progress of the renewable energy facility siting process.
- (c) The renewable energy facilitator position shall be funded by the energy security special fund.”

## PART II

The purpose of this part is to provide additional resources for the energy initiatives to carry out Hawaii’s long-term energy strategy through a new energy security special fund in order to secure a sustainable energy future for Hawaii.

SECTION 3. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§201-B Energy security special fund; uses.** (a) There is created within the state treasury an energy security special fund, which shall consist of:

- (1) Moneys appropriated to the fund by the legislature;
  - (2) All interest attributable to investment of money deposited in the fund; and
  - (3) Moneys allotted to the fund from other sources.
- (b) Moneys from the fund shall be expended by the department of business, economic development, and tourism for the following purposes and shall be used for no other purposes except for those set forth in this section:
- (1) To support its energy program, including projects that ensure dependable, efficient, and economical energy, promote energy self-sufficiency, and provide greater energy security for the State; and
  - (2) To fund the renewable energy facilitator pursuant to section 201-A and any other positions necessary for the purposes of paragraph (1) as determined by the legislature.”

SECTION 4. Section 128D-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Moneys from the fund shall be expended by the department for response actions and preparedness, including removal and remedial actions, consistent with this chapter; provided that the revenues generated by the “environmental response tax” and deposited into the environmental response revolving fund:

- (1) Shall also be used:
  - (A) For oil spill planning, prevention, preparedness, education, research, training, removal, and remediation; ~~and~~
  - (B) For direct support for county used oil recycling programs; and

- (C) For deposit into the energy security special fund, established under section 201-B, as may be appropriated by the legislature; and
- (2) May also be used to support environmental protection and natural resource protection programs, including but not limited to energy conservation and alternative energy development, and to address concerns related to air quality, global warming, clean water, polluted runoff, solid and hazardous waste, drinking water, and underground storage tanks, including support for the underground storage tank program of the department and funding for the acquisition by the State of a soil remediation site and facility.”

SECTION 5. On July 1, 2008, the director of finance shall transfer from the environmental response revolving fund the sum of \$112,000 to the energy security special fund for expenditure as authorized under section 201-B, Hawaii Revised Statutes.

SECTION 6. There is appropriated out of the energy security special fund the sum of \$112,000 or so much thereof as may be necessary for fiscal year 2008-2009 for one (1.00 FTE) full-time, temporary renewable energy facilitator.  
 The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

PART III

SECTION 7. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 9. This Act shall take effect on July 1, 2008.  
 (Approved July 1, 2008.)

Notes

- 1. Act 207.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 209

H.B. NO. 2261

A Bill for an Act Relating to Agricultural Loans.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 155-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Farm sustainable projects” means projects that improve the operation’s viability but are not directly tied to farm crop production. Projects may include but are not limited to photovoltaic energy, hydroelectric power, wind power generation, methane generation, food safety, product traceability, bio-diesel production, and ethanol production.”

SECTION 2. Section 219-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Aquaculture sustainable projects” means projects that improve the operation’s viability but are not directly tied to aquaculture production. Projects may include but are not limited to photovoltaic energy, hydroelectric power, wind power generation, methane generation, food safety, product traceability, biodiesel production, and ethanol production.”

SECTION 3. Section 155-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Loans made under this section shall bear simple interest on the unpaid principal balance, charged on the actual amount disbursed to the borrower. The interest rate on loans of class “A”, “B”, “C”, “E”, and “G” shall be at a rate of one per cent below the prime rate or at a rate of seven and one-half per cent a year, whichever is less. For purposes of this subsection, the prime rate shall be determined on January 1 and July 1 of each year, and shall be the prime rate charged by the two largest banks in the [State] state identified by the department of commerce and consumer affairs. If the prime rates of the two largest banks are different, the lower prime rate of the two shall apply. The interest rate on class “F” loans shall be six per cent a year. The interest rate of class “H” loans shall be three per cent a year. If the money loaned is borrowed by the department, then the interest on loans of the classes shall be the rate as determined above or one per cent over the cost to the State of borrowing the money, whichever is greater. Interest on class “D” loans shall not be less than three per cent a year.”

SECTION 4. Section 155-9, Hawaii Revised Statutes, is amended to read as follows:

**“§155-9 Classes of loans; purposes, terms, eligibility.** (a) Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes “A” through [~~“F”~~] “H” in this section and shall be made only to applicants who meet the eligibility requirements specified therein and except as to class “B” loans to associations and class “E” loans, the eligibility requirements specified in section 155-10. The maximum amount of a loan for class “A”, “C”, “D”, and “F” loans to an individual applicant shall also apply to any loan application submitted by a partnership, corporation, or other entity, and for the purpose of determining whether the maximum loan amount to any individual will be exceeded, outstanding loans to any partnership, corporation, or other entity that the individual has a legal or equitable interest in excess of twenty per cent shall be taken into account.

(b) Class A: Farm ownership and improvement loans shall provide for:

- (1) The purchase or improvement of farm land;
- (2) The purchase, construction, or improvement of adequate farm dwellings, and other essential farm buildings; and
- (3) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed \$800,000 and for a term not to exceed forty years. To be eligible, the applicant shall (A) derive, or present an acceptable plan to derive, a major portion of the applicant’s income from and devote, or intend to devote, most of the applicant’s time to farming operations; and (B) have or be able to obtain the operating capital, including livestock and equipment, needed to successfully operate the applicant’s farm.

(c) Class B: Soil and water conservation loans shall provide for:

- (1) Soil conservation practices;
- (2) Water development, conservation, and use;
- (3) Drainage; and

- (4) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed \$35,000 to an individual or \$200,000 to an association and shall be for a term not to exceed twenty years for a loan to an individual and forty years to an association. To be eligible, an individual applicant shall have sufficient farm and other income to pay for farm operating and living expenses and to meet payments on the applicant's existing debts, including the proposed soil and water conservation loan. An association, to be eligible, shall be a nonprofit organization primarily engaged in extending services directly related to the purposes of the loan to its members, and at least sixty per cent of its membership shall meet the eligibility requirements specified in section 155-10.

(d) Class C: Farm operating loans shall be for the purpose of carrying on and improving a farming operation, including:

- (1) The purchase of farm equipment and livestock;
- (2) The payment of production and marketing expenses, including materials, labor, and services;
- (3) The payment of living expenses;
- (4) The liquidation of indebtedness incurred for any of the foregoing purposes; and
- (5) The exportation of crops and livestock.

The loans shall be for an amount not to exceed \$800,000 and for a term not to exceed ten years. To be eligible, an applicant shall derive, or present an acceptable plan to derive, a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to farming operations.

Qualified farmers affected by state eradication programs may also be eligible for loans under this subsection. Loans made for rehabilitation from eradication programs shall be subject to the terms of class "C" loans; provided that the interest rate shall be three per cent a year and the requirements in section 155-3 shall be waived and paragraph (4) shall not apply.

(e) Class D: Emergency loans shall be for the purpose of providing relief and rehabilitation to qualified farmers without limit as to purpose:

- (1) In areas stricken by extraordinary rainstorms, windstorms, droughts, tidal waves, earthquakes, volcanic eruptions, and other natural catastrophes;
- (2) On farms stricken by livestock disease epidemics and crop blights;
- (3) On farms seriously affected by prolonged shipping and dock strikes;
- (4) During economic emergencies caused by overproduction, excessive imports, and the like; and
- (5) During other emergencies as determined by the board of agriculture.

The maximum amounts and period for the loans shall be determined by the board of agriculture; provided that the board shall require that any settlement or moneys received by qualified farmers as a result of an emergency declared under this section shall first be applied to the repayment of an emergency loan made under this chapter.

(f) Class E: Loans to farmers' cooperatives, corporations, and food manufacturers shall provide credit to entities engaged in marketing, purchasing, and processing, and providing farm business services, including:

- (1) Facility loans to purchase or improve land, building, and equipment for an amount not to exceed \$500,000 and a term not to exceed twenty years;
- (2) Operating loans to finance inventories of supplies and materials, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed \$300,000 and a term not to exceed seven years; and

## (3) The exportation of crops and livestock.

To be eligible, a farmers' cooperative or corporation shall have a majority of its board of directors and a majority of its membership as shareholders who meet the eligibility requirements of section 155-10 and who devote most of their time to farming operations, and the facility loans shall be for an amount not to exceed \$500,000 or eighty per cent of the cost of the project, whichever is ~~[the lesser.]~~ less.

To be eligible, a food manufacturer shall be licensed to do business in the ~~[State,] state,~~ and the controlling interest of the entity shall possess a minimum of two years of relevant processing or manufacturing experience as acceptable to the department of agriculture. The entity shall process Hawaii-grown agricultural products or use Hawaii-grown agricultural products as an ingredient in the manufacturing process. Facility loans shall be for an amount not to exceed \$500,000 or eighty per cent of the cost of the project, whichever is ~~[the lesser.]~~ less. The requirements in section 155-10 shall be waived for food manufacturing loans; however, the entity shall be a sound credit risk with the ability to repay the money borrowed.

(g) Class F: Loans for new farmer programs shall provide for costs of a new farm enterprise for qualified new farmers:

(1) Initial loans made under this class shall be for purposes and in accordance with the terms specified in class "A" and "C" only, and shall be made only for full-time farming. The loans shall be made for an amount not to exceed \$100,000 or eighty-five per cent of the cost of the project, whichever is ~~[the lesser;]~~ less;

(2) Any subsequent loan shall be made from classes "A" to "D", respectively, depending upon the purpose for which the loan funds are used; and

(3) Borrowers shall comply with special term loan agreements as may be required by the department and shall take special training courses as the department deems necessary.

(h) Class G: Loans to part-time farmers shall be for farm improvement and operating purposes for carrying on and improving farming operations, including loans for:

(1) The purchase, construction, and improvement of farm production and growing structures;

(2) The purchase of farm equipment or livestock; and

(3) The payment of production and marketing expenses, including materials, labor, and services.

The liquidation of indebtedness incurred for any of the purposes under this subsection and for living expenses shall not be authorized purposes. Each loan shall be for an amount not to exceed \$25,000 and for a term not to exceed ten years.

(i) Class H: Farm sustainable project loans shall provide for:

(1) The purchase, construction, or improvement of essential farm buildings, including the improvement of existing farm buildings related to the project;

(2) The improvement of land that may be required by the project;

(3) The purchase of equipment and payment of any related expenses, including materials, labor, and services;

(4) Operating expenses associated with the project; or

(5) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed \$1,500,000 or eighty-five per cent of the project cost, whichever is less, and for a term not to exceed forty years.

To be eligible, the applicant shall be a qualified farmer of sound credit rating with the ability to repay the money borrowed, as determined by the department. Income from the applicant's farming activities and any supplemental income that may

be generated from the project shall be the sole criterion for the department's determination of the applicant's ability to repay the money borrowed. The department's determination may be based on projections of income and expenses."

SECTION 5. Section 219-6, Hawaii Revised Statutes, is amended to read as follows:

**"§219-6 Loan; limitation and terms.** Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes "A", "B", "C", [~~and~~] "D", and "H" in [~~paragraph~~] paragraphs (1), (2), (3), [~~and~~] (4), and (5) following and shall be made only to applicants who meet the eligibility requirements specified therein:

- (1) Class A: Aquaculture farm ownership and improvement loans. To provide for:
  - (A) The purchase or improvement of aquaculture farm land and waters;
  - (B) The purchase, construction, or improvement of adequate aquaculture farm dwellings, and other essential aquaculture farm facilities; and
  - (C) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$400,000 and for a term not to exceed forty years. To be eligible, the applicant shall:

- (i) Derive, or present an acceptable plan to derive, a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to aquaculture farming operations; and
  - (ii) Have or be able to obtain the operating capital, including fishstock and equipment, needed to successfully operate the applicant's aquaculture farm;
- (2) Class B: Aquaculture operating loans. To carry on and improve an aquaculture operation, including:
  - (A) The purchase of aquaculture equipment and fishstock;
  - (B) The payment of production and marketing expenses, including materials, labor, and services;
  - (C) The payment of living expenses; and
  - (D) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$400,000 and for a term not to exceed ten years. To be eligible, an applicant shall derive or present an acceptable plan to derive a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to aquaculture operations;

- (3) Class C: Aquaculture cooperative and corporation loans. To provide credit to aquaculturists' cooperative associations and corporations engaged in marketing, purchasing, and processing, and providing farm business services, including:
  - (A) Facility loans to purchase or improve land, building, and equipment for an amount not to exceed \$500,000 and a term not to exceed twenty years; and
  - (B) Operating loans to finance inventories of supplies, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed \$300,000 and a term not to exceed seven years.

To be eligible, a cooperative or corporation shall have at least seventy-five per cent of its board of directors and seventy-five per cent of its membership as shareholders who meet the eligibility requirements prescribed by the board and who devote most of their time to aquaculture operations; ~~and~~

- (4) Class D: Emergency loans. To provide relief and rehabilitation to qualified aquaculturists without limit as to purpose:
- (A) In areas stricken by extraordinary rainstorms, windstorms, droughts, tidal waves, earthquakes, volcanic eruptions, and other natural catastrophes;
  - (B) On farms stricken by aquatic diseases;
  - (C) On farms seriously affected by prolonged shipping and dock strikes;
  - (D) During economic emergencies such as those caused by overproduction and excessive imports; and
  - (E) During other emergencies as determined by the board.

The maximum amounts and period for the loans shall be determined by the board; provided that the board shall require that any settlement or moneys received by qualified aquaculturists as a result of an emergency declared under this section shall first be applied to the repayment of an emergency loan made under this chapter~~[-]~~; ~~and~~

- (5) Class H: Aquaculture sustainable project loans shall provide for:
- (A) The purchase, construction, or improvement of essential farm buildings, including the improvement of existing farm buildings related to the project;
  - (B) The improvement of land that may be required by the project;
  - (C) The purchase of equipment and payment of any related expenses, including materials, labor, and services;
  - (D) Operating expenses associated with the project; or
  - (E) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed \$1,500,000 or eighty-five per cent of the project cost, whichever is less, and for a term not to exceed forty years.

To be eligible, the applicant shall be a qualified aquaculturist of sound credit rating with the ability to repay the money borrowed, as determined by the department. Income from the applicant's aquacultural activities and any supplemental income that may be generated from the project shall be the sole criterion for the department's determination of the applicant's ability to repay the money borrowed. The department's determination may be based on projections of income and expenses."

SECTION 6. Section 219-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Loans made under this section shall bear simple interest on the unpaid principal balance, charged on the actual amount disbursed. The interest rate for class "A", class "B", ~~and~~ class "C", ~~and~~ class "H" loans shall be set by rule, pursuant to chapter 91."

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved July 1, 2008.)



A Bill for an Act Relating to Evidence.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 621, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§621- Limitation on compellable testimony from journalists and newscasters; exceptions.** (a) A journalist or newscaster presently or previously employed by or otherwise professionally associated with any newspaper or magazine or any digital version thereof operated by the same organization, news agency, press association, wire service, or radio or television transmission station or network, shall not be required by a legislative, executive, or judicial officer or body, or any other authority having the power to compel testimony or the production of evidence, to disclose, by subpoena or otherwise:

- (1) The source, or information that could reasonably be expected to lead to the discovery of the identity of the source, of any published or unpublished information obtained by the person while so employed or professionally associated in the course of gathering, receiving, or processing information for communication to the public; or
- (2) Any unpublished information obtained or prepared by the person while so employed or professionally associated in the course of gathering, receiving, or processing information for communication to the public.

(b) The limitation on compellable testimony established by this section may also be claimed by and afforded to any individual who can demonstrate by clear and convincing evidence that:

- (1) The individual has regularly and materially participated in the reporting or publishing of news or information of substantial public interest for the purpose of dissemination to the general public by means of tangible or electronic media;
- (2) The position of the individual is materially similar or identical to that of a journalist or newscaster, taking into account the method of dissemination;
- (3) The interest of the individual in protecting the sources and unpublished information under subsection (a) is materially similar to the interest of the individuals referenced under subsection (a); and
- (4) The public interest is served by affording the protections of this section in a specific circumstance under consideration.

(c) This section shall not apply if:

- (1) Probable cause exists to believe that the person claiming the privilege has committed, is committing, or is about to commit a crime;
- (2) The person claiming the privilege has observed the alleged commission of a crime, but if:
  - (A) The interest in maintaining the privilege granted by this section outweighs the public interest in disclosure; and
  - (B) The commission of the crime is the act of communicating or providing the information or documents at issue,
 then the privilege granted by this section may be asserted;
- (3) There is substantial evidence that the source or information sought to be disclosed is material to the investigation, prosecution, or defense of a felony, or to a civil action for defamation, and the source or information sought is:

- (A) Unavailable, despite exhaustion of reasonable alternative sources;
- (B) Noncumulative; and
- (C) Necessary and relevant to the charge, claim, or defense asserted;
- (4) The information sought to be disclosed is critical to prevent serious harm to life or public safety; or
- (5) The source consents to the disclosure of unpublished documents or other tangible materials provided by the source.
- (d) No fine or imprisonment shall be imposed against a person claiming the privilege pursuant to this section for refusal to disclose information privileged pursuant to this section.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval, and shall be repealed on June 30, 2011.

(Approved July 2, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5

**ACT 211**

S.B. NO. 2915

A Bill for an Act Relating to Taro.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature recognizes the need to develop non-genetic modification based solutions to protect taro from disease and insects on a statewide basis. In Senate Concurrent Resolution No. 206 (2007), the legislature requested the department of agriculture to develop a taro security and purity research program to save and protect taro from natural attack.

In 2007, 1,800,000 pounds of taro were imported to Hawaii. Under existing biosecurity rules, the department of agriculture was unable to inspect much of the imported taro to protect existing taro crops in the State.

At the same time, taro farmers are struggling with high rates of pest and disease infestation, rising crop and land costs, lack of access to quality water and land resources, a decline in crop cultivar biodiversity, and a decrease in the number of families continuing the taro farming lifestyle. Taro and taro farms are important in helping to promote Hawaii’s economic vitality in agriculture, tourism, health and wellness, and education and the arts. Taro and taro farms help to sell Hawaii to the world.

Senate Concurrent Resolution No. 206 (2007) requested the department of agriculture (DOA) to collaborate with taro growers and various native Hawaiian groups to develop and adopt a program that would:

- (1) Allow DOA’s biosecurity program to protect crops in Hawaii by inspecting foreign crops upon entrance to the state, thereby preventing any viruses or insects from entering the State;
- (2) Allow alternative forms of research on taro other than genetic modification;
- (3) Provide public outreach, engagement, and education on taro research and protection; and

- (4) Request the United States Department of Agriculture to have the Alomae/Bobone virus disease complex and taro beetles designated as “actionable pests” in the findings of the United States Department of Agriculture and DOA report to prevent the entry of these pests into Hawaii from foreign countries.

DOA initiated a dialogue with taro farmers from each island, researchers and representatives from the University of Hawaii, the Hawaii Farm Bureau, and the office of Hawaiian affairs to produce a joint report describing the outcomes and recommendations of the participants. The joint report, including proposed legislation, was forwarded to the legislature.

One of the primary recommendations of that report was to form a taro security and purity task force to guide policy and prioritize research for the protection of taro in Hawaii.

To ensure that the task force would have the full participation of taro farmers who have faced crop hardships for many years without financial assistance and whose resources are limited, the participants recommended that funds be appropriated for the task force for fiscal year 2008-2009.

The purpose of this Act is to establish the taro security and purity task force and appropriate funds for the formation and operation of the task force with full participation of taro farmers from all islands.

SECTION 2. (a) There is established the taro security and purity task force that shall be placed within the office of Hawaiian affairs for administrative purposes.

(b) The task force shall include one representative from each of the following:

- (1) The office of Hawaiian affairs;
- (2) The department of agriculture;
- (3) The department of land and natural resources;
- (4) The University of Hawaii;
- (5) Onipa‘a Na Hui Kalo; and
- (6) The Hawaii Farm Bureau Federation.

The task force shall also include a minimum of two representatives from the taro farming communities of each of the islands of Kauai, Oahu, Maui, Molokai, and Hawaii, and one representative of botanical gardens or taro collections in the State.

At no time shall less than fifty per cent of the task force be comprised of taro farmers.

The members of the task force shall select a chairperson from among its members.

The task force members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, incurred in the performance of their official duties.

(c) The task force shall prioritize its objectives, which shall include, but not be limited to the following, in order to ensure that it is able to sufficiently address and render conclusions:

- (1) Develop guidelines, protocols, and recommendations for taro policy, non-genetic modification based taro research, and the allocation of resources to ensure that taro is saved and protected in Hawaii;
- (2) Develop a program of incentives and projects that have the support of a broad spectrum of taro growers that will enhance taro security, protect taro purity, provide support to taro farms and farmers, and improve taro markets for the long-term;
- (3) Support the recovery of traditional Hawaiian taro cultivars throughout the State;

- (4) Increase public awareness of the value of taro and its role culturally, socially, in health and well-being, environmentally, and economically in the State;
- (5) Develop a program to provide taro education and training opportunities;
- (6) Develop a program for commercial taro growers to maximize business viability and success;
- (7) Develop a taro farming grant program to assist taro farmers in need to preserve the cultural legacy of taro farming for future generations;
- (8) Discuss the feasibility and impact of requiring the department of land and natural resources to provide reduced lease rent rates for taro farmers on state-leased land; and
- (9) Develop taro research and outreach for the control and eradication of apple snails.

(d) The task force shall meet at times and locations to be determined by its members; provided that the first meeting of the task force shall be no later than three months after the effective date of this Act.

(e) The task force shall submit a preliminary report to the legislature documenting the status of its progress no later than twenty days prior to the convening of the regular session of 2009. The task force shall submit a final report to the legislature summarizing its program, the results achieved, actual expenditures, and recommended legislation no later than twenty days prior to the convening of the regular session of 2010.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$325,000<sup>1</sup> or so much thereof as may be necessary for fiscal year 2008-2009 to achieve the objectives of the taro security and purity task force, which may include:

- (1) Convening and operating the task force, including conducting discussions on all islands;
- (2) Contracting at least one person to facilitate, coordinate, communicate, and record the work of the task force;
- (3) Conducting archival and ethnographic research of the history of taro and taro practices in Hawaii and the traditional Hawaiian cultivars to aid in its revival and to revise Bulletin 84: Taro Varieties in Hawaii (1939) which is the key reference for taro growers and researchers;
- (4) Protecting the Molokai taro varieties collection, the oldest and most complete collection and source of taro varieties in Hawaii;
- (5) Conducting taro research and outreach for the control and eradication of the apple snail; and
- (6) Preparing the preliminary and final reports to be submitted to the legislature.

The sum appropriated shall be expended by the office of Hawaiian affairs for the purposes of this Act; provided that no funds shall be expended unless matched on a dollar for dollar basis by the office of Hawaiian affairs.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved July 3, 2008.)

#### Note

1. Item vetoed, replaced, and initialed "LL" on July 2, 2008.

A Bill for an Act Relating to Remote Dispensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that many individuals living in underserved or remote areas need improved access to medications and pharmacy services. A remote dispensing program that allows for the dispensing of low-cost medications through the use of a secure remote dispensing machine and patient counseling via a two-way interactive videoconferencing system will help to resolve the dual problem of access to prescription drugs and pharmacists for low-income populations.

The purpose of this Act is to permit the operation of remote dispensing machines by a licensed pharmacy or pharmacist.

SECTION 2. Chapter 461, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§461- Remote dispensing pharmacy; operations.** (a) A remote dispensing pharmacy shall be under the direct supervision of the registered pharmacist in charge of the responsible pharmacy who shall:

- (1) Ensure that the remote dispensing pharmacy is in compliance with all laws and rules governing the practice of pharmacy and remote dispensing;
  - (2) Ensure that the remote dispensing pharmacy is appropriately staffed by a qualified remote dispensing technician; and
  - (3) Be responsible for the integrity of the drugs in the remote dispensing machine and that drugs for the remote dispensing machine are provided to the remote dispensing pharmacy only from the responsible pharmacy.
- (b) Physical set-up. A remote dispensing pharmacy shall:
- (1) Be effectively secured to prevent unauthorized access at all times, and entry to the remote dispensing pharmacy shall be limited to authorized personnel only;
  - (2) Be connected via live computer link, video link, and audio link to the responsible pharmacy and shall use the information technology system of the responsible pharmacy;
  - (3) Conspicuously display at the remote dispensing machine:
    - (A) A copy of the license of the responsible pharmacy; and
    - (B) A copy of the license of the pharmacist in charge of the responsible pharmacy; and
  - (4) Have a confidential area available for communication between the patient and the pharmacist at the responsible pharmacy.
- (c) No remote dispensing pharmacy shall operate within a five mile radius of any pharmacy as defined under section 461-1; provided that:
- (1) This subsection shall not apply to any remote dispensing pharmacy established prior to the effective date of this Act that has previously dispensed and will continue to dispense only prescription medications acquired pursuant to section 340B of the Public Health Service Act, title 42 United States Code section 256b; and
  - (2) If an appropriately designated pharmacy, as defined in section 461-1, Hawaii Revised Statutes, is established within a five mile radius of an existing remote dispensing pharmacy exempted by this subsection,

all appropriate measures shall be taken to encourage the relocation of the existing remote dispensing machine within the newly established pharmacy.

(d) Remote dispensing pharmacies shall not provide medications to patients with health insurance coverage except for patients covered by QUEST.

(e) The remote dispensing technician shall offer each patient the option of receiving counseling by a pharmacist at the responsible pharmacy for all prescriptions.

(f) A pharmacist at the responsible pharmacy shall approve each prescription before it is dispensed to the patient.

(g) Each remote dispensing machine shall be operated by only one responsible pharmacy. A responsible pharmacy may operate through more than one remote dispensing machine.

(h) The remote dispensing machine shall have the following features to ensure that it is appropriately secure at all times and that all transactions are properly documented:

- (1) Secure double-locked cabinets;
- (2) Bar-coding or similar technology that effectively recognizes the product;
- (3) A cabinet that delivers only one bar-coded unit-of-use container per dispense, per prescription;
- (4) A scanner and printer that, upon releasing the unit-of-use container from the remote dispensing machine, the container is scanned to confirm it is the correct container, and with that confirmation, the printer will print a patient-specific label that has a bar code which is scanned to confirm it is the correct label for the prescription; and
- (5) A video component that allows the patient to have a "face-to-face" consultation with the pharmacist at the responsible pharmacy.

(i) A pharmacist shall be in charge of the remote dispensing machine and shall ensure that:

- (1) Written policies and procedures are developed prior to using the machine that:
  - (A) Ensure the safe and effective dispensing of pharmaceutical products;
  - (B) Ensure the remote dispensing pharmacy and the remote dispensing machine is operating safely, accurately, and securely; and
  - (C) Define access to the remote dispensing machine and to medications contained within or associated with the machine, including policies that assign, discontinue, or change access to the remote dispensing machine and medications;
- (2) A pharmacist licensed in this State and employed by the responsible pharmacy has secured access to the drugs in the remote dispensing machine;
- (3) Access to the medications complies with state and federal laws, rules, and regulations;
- (4) No prescription drug is dispensed at the remote dispensing pharmacy until a pharmacist at the responsible pharmacy has verified the finished prescription;
- (5) Only one prescription is dispensed and labeled from the remote dispensing machine at a time;
- (6) All prescriptions dispensed have a label affixed to the final drug container that meets the requirements set forth in section 328-16 and includes the address of the remote dispensing pharmacy;

- (7) If a patient refuses the prescription drug at the time it is dispensed, the prescription drug is locked in a secured cabinet;
- (8) There is proper inventory control at the remote dispensing pharmacy and only a registered pharmacist or a remote dispensing technician assigned by the pharmacist in charge of the responsible pharmacy shall stock the remote dispensing machine;
- (9) A reconciliation of the physical inventory of the remote dispensing pharmacy is conducted at least annually;
- (10) All personnel who operate the remote dispensing machine at the remote dispensing pharmacy are properly trained. Training shall ensure the competence and ability of all personnel who operate any component of the remote dispensing machine and the remote dispensing pharmacy. Documentation of training shall be kept by the responsible pharmacy; and
- (11) The remote dispensing machine is stocked accurately and in accordance with established written policies and procedures. The pharmacist shall check the accuracy of the product supplied for stocking the remote dispensing machine.
  - (j) Controlled substances shall not be dispensed from any remote dispensing machine or remote dispensing pharmacy.
  - (k) Drugs dispensed from the remote dispensing machine shall be dispensed as packaged, with no changes to the drug, its strength, or its unit quantity, except for the addition of water for reconstitution of dry powder drugs.
  - (l) Prescription labels for the product dispensed from the remote dispensing machine shall only be generated at the remote dispensing pharmacy.
  - (m) Records of prescriptions filled at the remote dispensing pharmacy shall be maintained at the responsible pharmacy and shall be distinguishable from those records filled at the responsible pharmacy. All responsible pharmacies shall maintain, on-site at the remote dispensing pharmacy and have available for inspection at all times, records and documentation of the following:
    - (1) All prescriptions dispensed at the remote dispensing pharmacy;
    - (2) All inventory movement at the remote dispensing pharmacy; and
    - (3) A policies and procedures manual of the remote dispensing pharmacy.
  - (n) No health insurance provider group, hospital, or medical service plan regulated under article 431-10A or 432-1 shall operate a remote dispensing pharmacy.
    - (o) This section shall not apply to:
      - (1) Mobile medical clinics, provided that no such clinic shall operate in counties with a population less than 100,000; or
      - (2) Federally qualified health centers, provided that no remote dispensing pharmacy shall operate within a five mile radius of any pharmacy as defined under section 461-1, except for those federally qualified health centers that are exempt under section 461- (c)(2).

As used in this subsection, “mobile medical clinic” means a motor vehicle retrofitted for exclusive use as a medical office or clinic for medical services licensed under chapter 321.”

SECTION 3. Section 461-1, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

“Remote dispensing” means the practice of dispensing drugs through the use of trained personnel, telecommunications, and information technologies to patients at a remote dispensing pharmacy.

“Remote dispensing machine” means a device used for dispensing unit-of-use drugs that are acquired pursuant to section 340B of the Public Health Service

Act, title 42 United States Code section 256b, that is operated using information technologies and is located in a remote dispensing pharmacy.

“Remote dispensing pharmacy” means the area in an institutional facility, including a federally qualified health center, providing outpatient medical care in any county, by dispensing prescription drugs that are acquired pursuant to section 340B of the Public Health Service Act, title 42 United States Code section 256b, through the use of a remote dispensing machine.

“Remote dispensing technician” means an individual who assists the pharmacist in various activities specific to the remote dispensing pharmacy.

“Responsible pharmacy” means a pharmacy that operates a remote dispensing machine located in this State and holds a valid permit issued by the board pursuant to section 461-14.”

SECTION 4. Section 461-14, Hawaii Revised Statutes, is amended to read as follows:

**“§461-14 Permits for operation of pharmacy[-]; notification of remote dispensing pharmacy.** (a) It shall be unlawful for any person to operate, maintain, open, change location, or establish any pharmacy or remote dispensing pharmacy within the State without ~~[first]~~ having first obtained a permit or prior notification from the board.

(b) Application for permits and notifications shall be made on a form to be prescribed by the board. Separate ~~[application]~~ applications shall be made and separate permits and notifications issued for each separate place at which is carried on any of the operations for which a permit or notification is required.

(c) On evidence satisfactory to the board, a permit or notification shall be issued ~~[-, provided:]~~; provided that:

(1) ~~[That the]~~ The pharmacy for which the permit or notification is sought is or will be ~~[-]~~ in full compliance with this chapter and rules of the board;

(2) ~~[That the]~~ The location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety; and

(3) ~~[That the]~~ The pharmacy will be under the personal and immediate supervision of a registered pharmacist.

(d) ~~[No application]~~ An application for a permit shall be refused ~~[except pursuant to]~~ for noncompliance with this section [and] but only after notice to the applicant and a full and fair hearing.

(e) To operate a remote dispensing pharmacy, a responsible pharmacy shall submit to the board the following information:

(1) A completed form prescribed by the board;

(2) The name, address, and permit number of the responsible pharmacy;

(3) The name and license number of the pharmacist in charge of the responsible pharmacy;

(4) The name of the institutional health care facility and the address of the remote dispensing pharmacy;

(5) A floor plan of the remote dispensing pharmacy, which shall indicate the space or location of the remote dispensing machine;

(6) The date the remote dispensing pharmacy will be ready for operations;

(7) A description of the security system;

(8) A description of the computer link, video link, and audio link; and

(9) Photographs of the remote dispensing pharmacy area, including but not limited to the remote dispensing machine, the security system, comput-



er link, video link, audio link, confidential-communications area, and locked cabinet.

A remote dispensing pharmacy’s failure to notify the board in writing within thirty days of any changes to the information described in paragraphs (1) to (9) or failure to comply with this chapter shall be considered a violation of this chapter and shall result in disciplinary action against the pharmacist in charge and the responsible pharmacy.

(f) Permits and licenses issued under this section and section 461-15 may be closed upon written request from the holder of the permit or license. The board shall approve all requests by the holder for closure of a permit or license. Once the closure is approved, the holder of the closed permit or license shall be required to re-apply as a new applicant to conduct business where a permit or license is required.”

SECTION 5. The department of commerce and consumer affairs shall submit an annual report to the legislature no later than twenty days prior to the convening of the regular legislative session, beginning with the regular session of 2009 and ending with the regular session of 2013. The report shall include information on the use of the remote dispensing machines.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval and shall be repealed on January 1, 2013.

(Approved July 3, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 213

H.B. NO. 2272

A Bill for an Act Relating to Qualified Community Rehabilitation Programs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 76-77, Hawaii Revised Statutes, is amended to read as follows:

“§76-77 **Civil service and exemptions.** The civil service to which this part applies comprises all positions in the public service of each county, now existing or hereafter established, and embraces all personal services performed for each county, except the following:

- (1) Positions in the office of the mayor; provided that the positions shall be included in the classification systems;
- (2) Positions of officers elected by public vote, positions of heads of departments, and positions of one first deputy or first assistant of heads of departments;
- (3) Positions of deputy county attorneys, deputy corporation counsel, deputy prosecuting attorneys, and law clerks;
- (4) Positions of members of any board, commission, or agency;
- (5) Positions filled by students; positions filled through federally funded programs which provide temporary public service employment such as

- the federal Comprehensive Employment and Training Act of 1973; and employees engaged in special research or demonstration projects approved by the mayor, for which projects federal funds are available;
- (6) Positions of district judges, jurors, and witnesses;
  - (7) Positions filled by persons employed by contract where the personnel director has certified that the service is special or unique, is essential to the public interest, and that because of the circumstances surrounding its fulfillment, personnel to perform the service cannot be recruited through normal civil service procedures; provided that no contract pursuant to this paragraph shall be for any period exceeding one year;
  - (8) Positions of a temporary nature needed in the public interest where the need does not exceed ninety days; provided that before any person may be employed to render temporary service pursuant to this paragraph, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable; and provided further that the employment of any person pursuant to this paragraph may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director;
  - (9) Positions of temporary election clerks in the office of the county clerk employed during election periods;
  - (10) Positions specifically exempted from this part by any other state statutes;
  - (11) Positions of one private secretary for each department head; provided that the positions shall be included in the classification systems;
  - (12) Positions filled by persons employed on a fee, contract, or piecework basis who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the county and that fact is certified by the director;
  - (13) Positions filled by persons with a severe disability who are certified by the state vocational rehabilitation office as able to safely perform the duties of the positions;
  - (14) Positions of the housing and community development office or department of each county; provided that this exemption shall not preclude each county from establishing these positions as civil service positions;
  - (15) The following positions in the office of the prosecuting attorney: private secretary to the prosecuting attorney, secretary to the first deputy prosecuting attorney, and administrative or executive assistants to the prosecuting attorney; provided that the positions shall be included in the classification systems; and
  - (16) Positions or contracts for personal services with private persons or entities for services lasting no more than one year and at a cost of no more than \$750,000[-]; provided that the exemption under this paragraph shall apply to contracts for building, custodial, and grounds maintenance services with qualified community rehabilitation programs, as defined in section 103D-1001, lasting for no more than a year and at a cost of no more than \$850,000.

The director shall determine the applicability of this section to specific positions and shall determine whether or not positions exempted by paragraphs (7) and (8) shall be included in the classification systems.

Nothing in this section shall be deemed to affect the civil service status of any incumbent private secretary of a department head who held that position on May 7, 1977.”

SECTION 2. The department of human resources development shall report annually to the legislature, no later than twenty days prior to the convening of each regular session beginning with the regular session of 2009, on expenditures of qualified community rehabilitation programs and related activities.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 3, 2008.)

**ACT 214**

H.B. NO. 2531

A Bill for an Act Relating to the West Maui Transportation Access Plan.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that West Maui is one of the largest generators of state and county revenues and is one of the largest visitor destinations outside of Waikiki. Yet access in and out of the region is served by only one major highway that may be closed for days at a moment’s notice, which occurred in the past two years due to wildfires. In West Maui, unlike in other areas where a full-blown natural disaster is the cause for a total shutdown of transportation access, events and accidents that do not rise to the level of an emergency have closed the highway for days. Because of the non-emergency status of these incidents, the State has no coordinated plan to transport people into and out of West Maui during road closures. Because there is no hospital in West Maui, such road closures put people’s lives at risk. They also divide families, as many Maui residents work in West Maui but reside in other parts of Maui county. The booming visitor industry in West Maui is also jeopardized.

During July of 2007 when a fire closed the highway for several days, a task force was created by the department of land and natural resources to address transportation access to West Maui. However, because no official support was mandated for this group’s work, the task force has dispersed. The legislature finds that a West Maui transportation access plan is critical.

The purpose of this Act is to require the department of transportation to develop a West Maui transportation access plan, which can serve as a model for developing plans in other areas having similar problems, such as West Kauai, Wainee, and the Kealahou area.

SECTION 2. (a) There is created the informal, temporary West Maui transportation access plan working group within the department of transportation to develop a West Maui transportation access plan to address road closures in West Maui. The working group may elect from among its members a chairperson. The working group shall consist of the following members:

- (1) The director of transportation;
- (2) The state senator representing district 5 in West Maui;
- (3) The state representative representing district 10 in West Maui;
- (4) The member of the Maui county council representing West Maui;

- (5) The chief of the highway division of the department of transportation;
- (6) A staff member of the department of land and natural resources representing the Lahaina small boat harbor;
- (7) The mayor of Maui county;
- (8) The director of the department of transportation of Maui county;
- (9) The police chief of Maui county;
- (10) The fire chief of Maui county;
- (11) The administrator of the civil defense agency of Maui county;
- (12) A representative of Lahaina Bypass Now;
- (13) A representative of the Kaanapali Beach Resort Association;
- (14) A representative of the Maui Visitors Bureau;
- (15) A Maui-based representative of Island Air;
- (16) A Maui-based representative of the Car and Truck Renting and Leasing Association;
- (17) A representative of the Maui Hotel and Lodging Association;
- (18) A Maui-based representative of the Hawaii Transportation Association;
- (19) A representative of the Pacific Radio Group;
- (20) A representative of Expeditions Lanai Ferry;
- (21) A representative of Molokai Princess Ferry; and
- (22) A Maui-based representative of Cruise Lines International Association.

(b) The temporary working group shall develop a West Maui transportation access plan to address road closures in West Maui and may contract with a consultant to develop the plan without regard to chapter 103D, Hawaii Revised Statutes.

(c) The temporary working group shall submit a written report including findings, recommendations, the finalized West Maui transportation access plan, and any necessary proposed legislation to the legislature no later than twenty days prior to the convening of the regular session of 2009.

(d) The temporary working group shall terminate on June 30, 2009.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of ~~\$50,000~~ \$0<sup>1</sup> or so much thereof as may be necessary for fiscal year 2008-2009 for the West Maui transportation access plan temporary working group to develop a West Maui transportation access plan, including the hiring of a technical consultant.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval, except that section 3 shall take effect on July 1, 2008.

(Approved July 7, 2008.)

#### Note

1. Item vetoed, replaced, and initialed "LL" on July 3, 2008.

## ACT 215

H.B. NO. 3178

A Bill for an Act Relating to Civil Penalties for Violations on Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The State must remain vigilant in its duty to protect Hawaii's natural resources for the benefit of all of its residents and future generations. The leg-

islature finds that in recent years, there has been an increase in the intentional violation of and blatant disregard for state natural resources laws. Consequently, the State has been under considerable strain in fulfilling that obligation, due to ineffective means of enforcement, limited resources, and a shortage of enforcement personnel. Existing civil penalties for most violations are nominal and do not appear to deter such behavior effectively.

Increasing penalties for civil violations of the State's natural resources laws is an effective means of deterring unlawful behavior by imposing serious consequences for such violations. The purpose of this Act is to increase civil penalty fine amounts for violations on public lands and to clarify penalties for encroachment on public lands.

SECTION 2. Section 171-6, Hawaii Revised Statutes, is amended to read as follows:

“§171-6 Powers. Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may:

- (1) Adopt a seal;
- (2) Administer oaths;
- (3) Prescribe forms of instruments and documents;
- (4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
- (5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its government records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;
- (6) Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license, or permit, and the qualifications of any person to draw, bid, or negotiate for public land;
- (7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use;
- (8) Delegate to the chairperson or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;
- (9) Utilize arbitration under chapter 658A to settle any controversy arising out of any existing or future lease;
- (10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving a commercial purpose;

- (11) Appoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;
- (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall ~~[be subject to a fine of]:~~
- (A) ~~Be fined not more than [\$500] \$1,000 a day for the first offense [and shall be liable for administrative costs incurred by the department and for payment of damages. Upon the second offense and thereafter, the violator shall (A) be];~~
  - (B) ~~Be fined not less than [\$500] \$1,000 nor more than [\$2,000] \$4,000 per day[; (B) if] upon the second offense and thereafter;~~
  - (C) ~~If required by the board, restore the land to its original condition if altered and assume the costs thereof; [and (C) assume]~~
  - (D) ~~Assume such costs as may result from adverse effects from such restoration; and~~
  - (E) ~~Be liable for administrative costs incurred by the department and for payment of damages;~~
- (13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed \$50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;
- (14) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (13);
- (15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be [fined]:
- (A) Fined not more than [~~\$500 a day and shall be liable~~] \$5,000 per violation for a first violation or a violation beyond five years of the last violation, provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
  - (B) Fined not more than \$10,000 per violation for a second violation within five years of the last violation, provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
  - (C) Fined not more than \$20,000 per violation for a third or subsequent violation within five years of the last violation, provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and
  - (D) Liable for administrative costs and expenses incurred by the department and for payment for damages[;], including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii State Constitution:

- (16) Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter. All revenue bonds shall be issued in the name of the department and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance;
- (17) Pledge or assign all or any part of the receipts and revenues of the department. The revenue bonds shall be payable from and secured solely by the revenue derived by the department from the industrial park or parks for which the bonds are issued;
- (18) Reimburse the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of this chapter; and
- (19) Do any and all things necessary to carry out its purposes and exercise the powers granted in this chapter.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 7, 2008.)

**ACT 216**

S.B. NO. 1891

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- **Criminal penalties.** (a) Any person found guilty of a violation of this chapter or any rules adopted thereunder shall be guilty of a petty misdemeanor and shall be punished as follows:

- (1) For a first offense, by a mandatory fine of not less than \$500, or imprisonment of not more than thirty days, or both;

- (2) For a second offense within five years of a previous conviction under this section, by a mandatory fine of not less than \$1,000, or imprisonment of not more than thirty days, or both; and
- (3) For a third or subsequent offense within five years of two prior convictions under this section, by a mandatory fine of not less than \$2,000, or imprisonment of not more than thirty days, or both.

(b) Any criminal action against a person for any violation under this section shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against the person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rules adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person pursuant to this section.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon approval.

(Approved July 7, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 217

H.B. NO. 3177

A Bill for an Act Relating to Penalties for Violations Within the Conservation District.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 183C-7, Hawaii Revised Statutes, is amended to read as follows:

**“§183C-7 Penalty for violation.** (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter and any zoning rule adopted in accordance therewith. These rules may be enforced by court order at the suit of the department or of the owner or owners of real estate directly affected by the rules. The provisions of section 607-25 shall apply to this chapter.

(b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than [~~\$2,000~~] \$15,000 per violation in addition to administrative costs [~~and~~], costs associated with land or habitat restoration, [~~or both, if required,~~] and damages to [~~state~~] public land[-] or natural resources, or any combination thereof. After written or verbal notification from the department, wilful violation of this [~~section~~] chapter or any rule adopted in accordance with this chapter may incur an additional fine of up to [~~\$2,000~~] \$15,000 per day per violation for each day in which the violation persists. The board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this subsection are cumulative and in addition to any other remedies allowed by law.



(c) This section shall not be construed to prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii Constitution.

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 7, 2008.)

**ACT 218**

H.B. NO. 2438

A Bill for an Act Relating to Cigarettes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
REDUCED IGNITION PROPENSITY CIGARETTES LAW**

§ -1 **Purpose.** It is the intent of this chapter to require that only reduced ignition propensity cigarettes be sold in the State. Although these cigarettes are not guaranteed to self-extinguish, they are expected to reduce accidental fires and related personal injury and property damage caused by cigarette smoking.

§ -2 **Definitions.** For the purposes of this chapter, unless the context otherwise requires:

“Cigarette” means:

- (1) Any roll for smoking, whether made wholly or in part of tobacco or any other substance, irrespective of size or shape, and whether or not the tobacco or substance is flavored, adulterated, or mixed with any other ingredient, with a wrapper or cover that is made of paper or any other substance or material, other than tobacco; or
- (2) Any roll for smoking wrapped in any substance containing tobacco, which, due to its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette as described in paragraph (1).

“Dealer” means the same as defined in section 245-1.

“Manufacturer” means:

- (1) Any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere, and intends to sell these cigarettes:
  - (A) In this state; or
  - (B) Anywhere in the United States through an importer;
- (2) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or
- (3) Any entity that becomes a successor of an entity described in paragraph (1) or (2).

“Quality control and quality assurance program” means laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing and to ensure that the testing repeatability remains within the required repeatability value for any test trial used to certify cigarettes under this chapter.

“Repeatability” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five per cent of the time.

“Sale” or “selling” means any transfer of title or possession, exchange, or barter, conditional or otherwise, and includes the giving of cigarettes as samples, prizes, or gifts, and the exchange of cigarettes for any consideration.

“Wholesaler” means the same as defined in section 245-1.

**§ -3 Cigarettes; reduced ignition propensity; manufacturer testing.** (a) Except as provided in sections -7 and -8, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section, and the manufacturer has filed a written certification with the state fire council in accordance with section -4(a) and the cigarettes have been marked in accordance with section -4(b).

- (1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials standard E2187-04 “Standard Test Method for Measuring the Ignition Strength of Cigarettes.” The state fire council may adopt as rules pursuant to chapter 91, a subsequent American Society of Testing and Materials Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with American Society of Testing and Materials standard E2187-04 and the performance standard of this section;
- (2) Testing of cigarettes shall be conducted on ten layers of filter paper;
- (3) No more than twenty-five per cent of the cigarettes tested in a test trial shall exhibit full-length burns. Forty replicate tests shall constitute a complete test trial for each cigarette tested;
- (4) The performance standard required by this section shall only be applied to a complete test trial;
- (5) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization/International Electrotechnical Commission, or other comparable accreditation standard required by the state fire council;
- (6) Laboratories that conduct tests in accordance with this section shall implement a quality control and quality assurance program that includes a procedure to determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19;
- (7) Each cigarette listed in a certification that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column. In the case of an unfiltered cigarette, the two complete

bands shall be located at least fifteen millimeters from the lighting end and ten millimeters from the labeled end of the tobacco column; and

- (8) The manufacturer of a cigarette that the state fire council determines cannot be tested in accordance with the test method required by this section shall propose to the state fire council a test method and performance standard for that cigarette. The state fire council may approve a test method and performance standard that the state fire council determines is equivalent to the requirement of this section, and the manufacturer may use that test method and performance standard for certification pursuant to section -4. If the state fire council determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter, and the state fire council finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the state fire council shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this State, unless the state fire council demonstrates a reasonable basis why the alternative test should not be accepted. All other applicable requirements of this section shall apply to the manufacturer.

(b) A manufacturer shall retain copies of the reports of testing conducted on cigarettes offered for sale in the State for a period of three years. The manufacturer shall provide copies of these reports to the state fire council and the attorney general upon written request. Any manufacturer who fails to make copies of these reports available within sixty days of receiving a written request shall be subject to a civil penalty not to exceed \$10,000 for each day after the sixtieth day that the manufacturer does not make the copies available.

(c) This section shall not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

(d) Testing performed or sponsored by the state fire council to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

(e) The state fire council shall review the effectiveness of this section and report every three years to the legislature the state fire council's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this chapter. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

**§ -4 Certification; marking.** (a) Each manufacturer shall submit to the state fire council written certification attesting that each cigarette has been tested in accordance with, and has met the performance standard required under section -3. The description of each cigarette listed in the certification shall include:

- (1) The brand or trade name on the package;
- (2) Style, such as light or ultra light;
- (3) Length in millimeters;
- (4) Circumference in millimeters;
- (5) Flavor, such as menthol, if applicable;
- (6) Filter or nonfilter;
- (7) Package description, such as a soft pack or box;
- (8) The mark approved pursuant to subsection (b);

- (9) The name, address, and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
- (10) The date that the testing occurred.

Each cigarette certified under this subsection shall be recertified every three years. For each cigarette listed in a certification, a manufacturer shall pay to the state fire council a \$375 fee. The state fire council is authorized to annually adjust this fee to ensure it defrays the actual costs of the processing, testing, enforcement, and oversight activities required by this chapter.

The certifications shall be made available to the attorney general for purposes consistent with this chapter.

(b) Cigarettes that have been certified pursuant to subsection (a) shall be marked pursuant to the following requirements:

- (1) The marking shall be in a font of at least eight-point type and shall include one of the following:
  - (A) Modification of the product's universal product code to include a visible mark printed at or around the area of the universal product code. The mark may consist of one or more alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the universal product code;
  - (B) Any visible combination of alphanumeric or symbolic characters permanently printed, stamped, engraved, or embossed on the cigarette package or the cellophane wrap; and
  - (C) Printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this section; and
- (2) Prior to the certification of any cigarette, a manufacturer shall request approval of a proposed marking from the state fire council. Upon receipt of the request, the state fire council shall approve or disapprove the marking offered, except that the state fire council shall approve:
  - (A) Any marking approved and in use for the sale of cigarettes in the state of New York; or
  - (B) The letters "FSC," which signifies fire standards compliant, appearing in eight-point type or larger and permanently printed, stamped, engraved, or embossed on the package at or near the universal product code.

A marking shall be deemed approved if the state fire council fails to act within ten business days of receiving a request for approval. A manufacturer shall not use a modified marking unless the modification has been approved in accordance with this chapter. A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including packs, cartons, and cases, and brands marketed by that manufacturer.

(c) The state fire council shall be notified as to the marking that is selected.

(d) A manufacturer shall provide a copy of certifications to all wholesalers to which the manufacturer sells cigarettes and shall provide sufficient copies of an illustration of the packaging marking approved and used by the manufacturer pursuant to subsection (b) for each of the dealers that purchases cigarettes from any of those wholesalers. Wholesalers shall provide a copy of the illustration to all dealers to which they sell cigarettes. Wholesalers and dealers shall permit the state fire council and the attorney general to inspect markings on cigarette packaging at any time.

**§ -5 State fire council; rules; implementation.** The state fire council:

- (1) May adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this chapter;
- (2) May examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where ciga-

rettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises to enforce the provisions of this chapter, through its duly authorized representatives, or the attorney general and its duly authorized representatives, or other law enforcement personnel. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold or offered for sale, shall give the state fire council, the attorney general, their duly authorized representatives, and other law enforcement personnel, the means, facilities, and opportunity for the examinations authorized by this paragraph; and

- (3) Shall ensure that the implementation of this chapter is in accordance with the implementation and substance of the New York fire safety standards for cigarettes.

**§ -6 Penalties; enforcement; attorney general.** (a) The following civil penalties may be assessed:

- (1) Against a manufacturer, wholesaler, or any other person or entity that knowingly sells cigarettes, except by licensed retail sales, in violation of section -3, a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale; provided that in no case shall the penalty exceed \$100,000 during any thirty-day period;
- (2) Against a manufacturer that knowingly makes a false certification pursuant to section -4, a civil penalty of at least \$75,000 and not to exceed \$250,000 for each false certification;
- (3) Against a dealer that knowingly sells or offers for sale cigarettes in violation of section -3, a civil penalty not to exceed \$100 for each pack of cigarettes sold or offered for sale; provided that in no case shall the penalty exceed \$25,000 for sales or offers to sell during any thirty-day period; and
- (4) Against any other person that violates this chapter, a civil penalty for a first offense not to exceed \$1,000, and for a subsequent offense not to exceed \$5,000 for each violation.

(b) Any cigarettes sold or offered for sale that do not comply with the performance standard required by section -3 shall be subject to forfeiture under chapter 712A. Cigarettes forfeited pursuant to this subsection shall be destroyed.

(c) Whenever any law enforcement officer or duly authorized representative of the state fire council discovers any cigarettes that have not been marked in the manner required under section -4, the officer or representative may seize and take possession of the cigarettes. The cigarettes shall be considered contraband and may be seized with or without a warrant and turned over to the attorney general. The contraband cigarettes shall be subject to forfeiture under chapter 712A. Cigarettes seized pursuant to this subsection shall be destroyed.

(d) In addition to any other remedy provided by law, the attorney general may file an action for a violation of this section, including petitioning for injunctive relief, recovery of costs or damages suffered by the State as the result of a violation of this section, including enforcement costs relating to the specific violation and attorney fees. Each violation of this chapter or of any rule adopted pursuant to this chapter shall constitute a separate civil violation for which the attorney general may obtain relief.

**§ -7 Exemption.** Nothing in this chapter shall be construed to prohibit any person from manufacturing or selling cigarettes that do not meet the requirements of this chapter, if the cigarettes are or will be stamped for sale in another state or are to be sold outside the United States.

§ -8 **Existing inventories; consumer testing.** The requirement that cigarettes sold in Hawaii must be in compliance with this chapter shall not prohibit:

- (1) Wholesalers or dealers from selling existing cigarette inventories on or after the effective date of this Act; provided that the wholesaler or dealer can establish both of the following to the satisfaction of the state fire council:
  - (A) The Hawaii tax stamps were affixed to the cigarettes pursuant to chapter 245 prior to the effective date of this Act; and
  - (B) The inventory was purchased prior to the effective date of this Act, and the purchased inventory is comparable to the amount of inventory purchased during the same period the previous year; or
- (2) The sale of cigarettes solely for the purpose of consumer testing. For the purposes of this paragraph, the term “consumer testing” means an assessment of cigarettes that is conducted by or under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of cigarettes, using only the quantity of cigarettes that is reasonably necessary for the assessment, and in a controlled setting where the cigarettes are either consumed on-site or returned to the testing administrators at the conclusion of the testing.”

SECTION 2. Section 132-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to adopting a state fire code pursuant to section 132-3, the state fire council shall [serve]:

- (1) Administer the requirements for reduced ignition propensity cigarettes, in accordance with chapter \_\_\_\_\_ ; and
- (2) Serve as a focal point through which all applications to the federal government for federal grant assistance for fire-related projects shall be made. Upon the receipt of any such federal grants, the state fire council shall administer those federal grants.”

SECTION 3. This Act shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this Act is adopted and becomes effective.

SECTION 4. Notwithstanding any other provision of law, the counties may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or preempted by, any provision of this Act or with any policy of this State expressed by this Act, whether that policy be expressed by inclusion of a provision in this Act or by exclusion of that subject from this Act.

SECTION 5. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on September 30, 2009, and shall be implemented to coincide with the excise tax incremental increase on cigarettes effective September 30, 2009, pursuant to section 245-3, Hawaii Revised Statutes; provided that section 4 shall take effect upon approval of this Act; provided further that section -5(1), Hawaii Revised Statutes, shall take effect upon approval of this Act.

(Approved July 7, 2008.)

#### Note

1. Act also includes bracketed and stricken material.

A Bill for an Act Relating to Public Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that approximately one hundred seventy-five female prisoners who are residents of the State of Hawaii are incarcerated in mainland prisons. Many of these women are parents.

The increased likelihood of children of incarcerated parents being at high risk for physical and mental problems, aggression, and criminal activity has been documented in numerous studies by various institutions, including the Center for Children of Incarcerated Parents, the Child Welfare League of America, and the Federal Resource Center for Children of Prisoners.

The legislature further finds that the children of Hawaii prisoners incarcerated on the mainland have an even higher risk of becoming troubled due to the geographical separation that precludes regular visits between parent and child and limits access to support services.

The legislature further finds that the current contract for incarcerating female prisoners, who are residents of Hawaii, on the mainland expires in October 2008. The near-term expiration of this contract provides an opportunity for the department of public safety to review what additional facilities and programs must be in place to adequately house and rehabilitate female prisoners upon their return to Hawaii.

The purpose of this Act is to create a strategic plan to provide services to the State's female prisoners who are incarcerated on the mainland and who will be returning to Hawaii.

SECTION 2. The department of public safety shall develop a strategic plan by January 1, 2009, to provide female prisoners returning to Hawaii adequate:

- (1) Housing;
- (2) Community supervision;
- (3) Medical care;
- (4) Drug treatment;
- (5) Reintegration programs;
- (6) Employment training; and
- (7) Transitional services.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of ~~\$100,000~~ \$0<sup>1</sup> or so much thereof as may be necessary for fiscal year 2008-2009 for the department of public safety to develop a strategic plan to ensure successful reentry into the community of as many female prisoners as possible who are returning from incarceration on the mainland and who are residents of the State of Hawaii.

The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2008.

(Approved July 7, 2008.)

**Note**

1. Item vetoed, replaced, and initialed "LL".

## ACT 220

S.B. NO. 2830

*For the complete final text of this law, see Special Session Act 11 beginning on page 947 which reflects the Legislature's override of the item veto in this Act.*

A Bill for an Act Relating to Caregiving.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I. JOINT LEGISLATIVE COMMITTEE ON FAMILY CAREGIVING**

SECTION 1. (a) The legislature finds that during the 2007 interim, the joint legislative committee on family caregiving continued its work on creating a comprehensive and sustainable, community-based family caregiver support system that includes:

- (1) A coordinated referral and case management service;
- (2) Centralization of available services;
- (3) Volunteers;
- (4) Education and training; and
- (5) Financial assistance.

During the 2007 interim, the joint legislative committee examined localized studies and surveys, some of which contained preliminary results, which provided concrete evidence of the needs of family caregivers. The joint legislative committee also studied what other states have done and are doing in response to the growing concern regarding eldercare issues.

(b) The purpose of this part is to:

- (1) Extend the work of the joint legislative committee on family caregiving for one year and require the committee to submit a report of its findings and recommendations to the legislature prior to the convening of the 2009 regular session;
- (2) Change the name of the joint legislative committee on family caregiving to the "joint legislative committee on aging in place"; and
- (3) Require the aging and disability resource center to provide the joint legislative committee with an update on the physical site for the center in Hawaii county and the "virtual" site in the city and county of Honolulu.

SECTION 2. Act 285, Session Laws of Hawaii 2006, as amended by Act 204, Session Laws of Hawaii 2007, is amended by amending section 2 to read as follows:

"SECTION 2. (a) There is established a joint legislative committee on [~~family caregiving.~~] aging in place. The committee shall be composed of eight members as follows:

- (1) Four members of the house of representatives, consisting of three members from the majority party and one member from the minority party, who shall be appointed by the speaker of the house of representatives; and
- (2) Four members of the senate, consisting of three members from the majority party and one member from the minority party, who shall be appointed by the president of the senate.

The committee shall select a chairperson from its membership.

(b) The joint legislative committee shall develop comprehensive public policy to strengthen support for family caregivers. For purposes of this Act, "family caregiver" means:



- (1) A person, including a non-relative such as a friend or neighbor, who provides unpaid, informal assistance to a person age sixty and older with physical or cognitive disabilities; and
- (2) A grandparent who is a caregiver for a grandchild who is age eighteen years or younger, or who is nineteen years of age or older with physical or cognitive limitations.
- (c) The joint legislative committee shall:
  - (1) Consider providing support in categories including:
    - (A) Coordinated services and policies;
    - (B) Training and education;
    - (C) Respite services;
    - (D) Financial incentives; and
    - (E) Balancing work and caregiving; ~~and~~
  - (2) Explore establishing a paid family leave program under the state temporary disability insurance law, similar to the California Paid Family Leave Program, to provide wage replacement benefits to employees who take time off from work to care for a seriously ill family member.
- (d) The joint legislative committee may explore issues of “aging in place”

as they relate to family caregiving.

(e) The Hawaii aging and disability resource center shall provide an update to the joint legislative committee of its development and implementation of the physical site for the center in the county of Hawaii, and the “virtual” site planned for the city and county of Honolulu.

~~(d)~~ (f) The joint legislative committee shall seek input from the department of health, the department of human services, the department of taxation, the University of Hawaii, the executive office on aging, and the elderly, disability, business, and faith-based communities.

~~(e)~~ (g) The joint legislative committee shall submit its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular sessions of 2007 ~~and~~, 2008~~[-]~~, and 2010.

~~(f)~~ (h) The joint legislative committee shall cease to exist on June 30, ~~[2008.]~~ 2010.”

## PART II. FINANCIAL ASSISTANCE FOR CAREGIVING

SECTION 3. The cash and counseling program is a national initiative sponsored by the Robert Wood Johnson Foundation; the United States Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation; and the Administration on Aging. Under the program, recipients of medicaid personal care services or home- and community-based services receive a flexible monthly allowance and can decide whom to hire and what services to receive. The program’s innovative approach enables participants to direct and manage their personal assistance services according to their own specific needs. Participants can choose a family member or friend, in lieu of an agency worker, to provide the services. They receive counseling and fiscal assistance to help them manage their allowance and responsibilities. The program was first implemented in Arkansas, New Jersey, and Florida, and has since expanded to include other states.

During the 2007 interim, the joint legislative committee on family caregiving received information and data related to the family caregiver needs assessment conducted by the executive office on aging, and cash and counseling research conducted by the executive office on aging and the University of Hawaii school of social work. The family caregiver needs assessment indicated that caregivers need more affordable services and financial assistance. The cash and counseling research demonstrated that those states that have cash and counseling programs reported high

satisfaction by both caregivers and care recipients and allowed informal caregivers to receive financial recognition for their services.

In Hawaii, there are out-of-pocket costs for families to pay for home- and community-based programs that are available for elders and persons with disabilities. The government pays for services for those who have lower incomes and qualify for medicaid. However, a majority of Hawaii's families are ineligible for public assistance and have to carry the financial burdens of caregiving. This leaves a gap in services for those elders of modest means. As a result, this group of individuals has the least coverage in terms of home- and community-based services.

The work on cash and counseling being conducted by the executive office on aging and the University of Hawaii school of social work will continue until the end of the 2007-2008 fiscal year. The research conducted to date shows that a cash and counseling project is worth pursuing, and it is essential to continue the work in developing phase two of a cash and counseling project, which can be completed by the end of 2008.

**SECTION 4.** The executive office on aging shall design a cash and counseling project for non-medicaid participants to direct and manage their personal assistance services according to their own specific needs, while enabling family caregivers to receive a level of financial recognition and support. In designing a cash and counseling project, the executive office on aging may consider including a respite care component, a case management component, a separate fiscal agent, a personal care component, and allowing the consumer to be the employer of any service provider, whether an agency or family member.

The executive office on aging may contract with a qualified consultant to assist in designing a cash and counseling project.

The project shall include an advisory group to assist with the design of the cash and counseling project. To ensure that those who have the greatest need and the fewest resources are able to use the program, the advisory group shall examine whether an asset limitation or restriction on consumers shall be implemented in the design of a cash and counseling project.

The executive office on aging shall report on the results of its efforts to design a cash and counseling project as part of the joint legislative committee on aging in place's report to the legislature pursuant to section 2 of this Act.

### **PART III. KUPUNA CARE**

**SECTION 5.** (a) On July 1, 1999, the executive office on aging launched its statewide long-term care program called kupuna care. Kupuna care was developed in partnership with the county area agencies-on-aging to address the growing numbers of elders with long-term care needs.

Services provided by kupuna care are intended to help meet the needs of older adults who cannot live at home without adequate help from family or formal services, and includes services such as adult day care, respite care, assisted transportation, attendant care, case management, chores, home-delivered meals, homemaker, transportation, and personal care.

Kupuna care was designed to assist, not totally support, Hawaii's older adults to live independently, safely, and healthily for as long as possible. The care may cover United States citizens or legal aliens sixty years or older who are not receiving other comparable government assistance, who need help with activities of daily living (eating, dressing, bathing, toileting, transferring, and mobility), or because they have reduced mental capacity, and who are not residing in an institution.

Voluntary contributions to the service provider are welcome for any service provided and are used to support the cost of care of additional clients. In addition to the services provided to the elderly, kupuna care also offers services for the family

caregivers of their elderly clients. As Hawaii's population ages, many more families will be providing higher levels of long-term care to frail and disabled older adults at home. For many family caregivers, their role as family caregiver arises as suddenly as the care recipient's health declines, leaving the family caregivers with an immediate need for services, but little preparation or education regarding who to contact for assistance or what services are available to them. In addition, family caregivers may not know who is capable or qualified to provide them with the services that they or the care recipients need. Family caregivers themselves need support services, including training, education, and counseling in areas such as caregiving and dealing with end-of-life issues.

In addition, there are emotional, physical, and financial costs of being a family caregiver. Younger family caregivers are often in critical need of finding ways to reduce the stress caused by caregiving. Respite has been shown to reduce stress and other negative consequences of caregiving. The *State of Hawaii Caregivers Need Assessment (2007)* indicates that respite is something that family caregivers need. Besides the everyday stress that respite can relieve, there are times when a family caregiver may unexpectedly be unable to provide the needed caregiving services due to the family caregiver's own illness, accident, or other reasons. At these times, emergency respite care becomes critical.

The needs assessment also indicates that family caregivers need financial support as they carry the heavy financial burdens of caring for a loved one. In addition, both family caregivers and care recipients need financial assistance to make necessary home modifications that enable the care recipient to age in place.

The legislature finds that the kupuna care program can expand its services and incorporate progressive ways of meeting the growing needs of Hawaii's older adults and allow these individuals to age in place.

(b) In addition to current kupuna care operation and services, the purpose of this part is to:

- (1) Allow the kupuna care program to:
  - (A) Offer emergency, overnight, and weekend respite services;
  - (B) Provide grants for home modifications that facilitate aging in place pursuant to a care plan as part of a cash and counseling approach; and
  - (C) Provide grants to family caregivers pursuant to a care plan as part of a cash and counseling approach; and
- (2) Increase program funding for kupuna care to ensure that kupuna care continues to maintain the quality of life of Hawaii's older adults and their family caregivers.

SECTION 6. The kupuna care program, as administered by the executive office on aging, may, in addition to its current operation and services:

- (1) Offer emergency, overnight, and weekend respite services;
- (2) Provide grants for home modifications that facilitate aging in place pursuant to a care plan as part of a cash and counseling approach; and
- (3) Provide grants to family caregivers pursuant to a care plan as part of a cash and counseling approach.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of ~~\$500,000~~ \$0<sup>1</sup> or so much thereof as may be necessary for fiscal year 2008-2009 to address the kupuna care program waitlist and for the expansion of the kupuna care program, in general.

The sum appropriated shall be expended by the executive office on aging for the purposes of this part.

## PART IV. GRANDPARENTS RAISING GRANDCHILDREN TASK FORCE

SECTION 8. (a) Act 204, Session Laws of Hawaii 2007 (Act 204), expanded the mandate of the joint legislative committee on family caregiving by including grandparents of children aged eighteen years and younger, or nineteen years of age or older with physical or cognitive limitations, in Act 204's definition of family caregiver. The revised definition is now more consistent with the scope of the National Family Caregiver Support Program. Act 204 also required the joint legislative committee to examine the issues facing this population of grandparents raising grandchildren.

Since then, numerous government agencies have testified before the joint legislative committee regarding how the agencies identify and address the needs of grandparents raising grandchildren. In addition, the executive office on aging presented the 2007 *Needs Assessment of Grandparents Raising Grandchildren in the State of Hawaii*, prepared by the University of Hawaii's department of family and consumer science.

The needs assessment indicates that, in Hawaii, more than 14,000 grandparents are the primary caregivers for more than 33,000 grandchildren, and that these numbers are expected to grow. While there is a wide range of service needs within this population, the most often-cited are those that relate to children's programs, financial assistance, respite, and grandparents' rights. Many of these services are available, but barriers are preventing grandparents from accessing them. Barriers may include:

- (1) A lack of information regarding the availability of services;
- (2) A lack of services in a particular county; or
- (3) Legal or financial impediments.

For instance, in focus groups, some grandparents expressed a fear of losing their grandchildren. Others identified a need for an advocate or case worker to help guide them to the services and through the various systems.

(b) The legislature finds that the needs assessment provides critical demographic information and feedback regarding what programs and services grandparents require to care for their grandchildren. The findings indicate that the population of grandparents raising grandchildren faces particular challenges, different in some ways from the general caregiver population, and should have a focused task force to specifically address those concerns. The legislature further finds that a comprehensive, coordinated effort is needed to identify:

- (1) The services that exist to meet the identified needs;
- (2) Any service deficiencies;
- (3) Barriers that prevent grandparents from accessing services; and
- (4) What can be done to facilitate the provision of services to grandparents raising grandchildren.

(c) The purpose of this part is to establish a task force to focus specifically on the needs and issues of grandparents raising grandchildren.

SECTION 9. (a) There is established a grandparents raising grandchildren task force to focus on the needs and issues of grandparents raising grandchildren. The task force shall consist of a representative of:

- (1) The University of Hawaii's college of tropical agriculture and human resources to serve as co-chair;
- (2) Queen Lili'uokalani Children's Center to serve as co-chair;
- (3) The University of Hawaii's center on aging research and education;
- (4) The department of education;
- (5) The department of human services;
- (6) The department of health's executive office on aging;

- (7) The department of public safety;
- (8) The judiciary;
- (9) The department of the attorney general's child support enforcement agency;
- (10) Each area office on aging;
- (11) The policy advisory board for elder affairs;
- (12) Na Tutu Coalition;
- (13) Legal Aid Society of Hawaii;
- (14) Volunteer Legal Services Hawaii;
- (15) Partners in Development; and
- (16) An individual who is a grandparent.

(b) In assessing the needs and issues of grandparents raising grandchildren, the task force shall, among other things:

- (1) Review the 2007 *Needs Assessment of Grandparents Raising Grandchildren in the State of Hawaii*, prepared by the University of Hawaii's department of family and consumer science;
- (2) Review the most recent *Four Year State Plan on Aging* submitted to the United States Administration on Aging by the executive office on aging and the area agencies on aging;
- (3) Review the testimony of the various agencies submitted to the joint legislative committee on family caregiving at its hearing on August 16, 2007, regarding issues facing grandparents raising grandchildren;
- (4) Review laws relating to issues of grandparents raising grandchildren, including:
  - (A) Section 302A-482, Hawaii Revised Statutes, regarding the affidavit for caregiver consent, which permits a caregiver, under certain circumstances, to enroll a minor in school and consent to participation in curricular and co-curricular activities;
  - (B) Chapter 571, Hawaii Revised Statutes, regarding child custody and support; and
  - (C) Chapter 587, Hawaii Revised Statutes, regarding child protective services;
- (5) Review the memorandum prepared by the department of education to guide school personnel when enrolling students who reside with caregivers;
- (6) Review the support and services offered to caregivers by the department of education through its comprehensive student support system;
- (7) Investigate whether a need arises when a minor residing, formally or informally, with a grandparent requires consent for medical service, including when a student needs consent for programs and services under the federal Individuals with Disabilities Act or Section 504 of the Rehabilitation Act of 1973;
- (8) Investigate the issues that arise when a minor residing formally or informally with a grandparent is returned to the custody of a parent;
- (9) Investigate any housing issues that may arise when a grandparent is raising a grandchild, particularly when the grandparent resides in senior housing, and identify any state or federal laws or rules that would render a grandparent cohabiting with a grandchild ineligible for housing under a particular scheme;
- (10) Review how each area office on aging allocates the federal funds it receives under the national family caregiver support program for grandparent programs;

- (11) Identify the agencies that collect data relating to grandparents raising grandchildren and determine whether the data can be more comprehensive, uniform, and readily available or exchanged; and
- (12) Identify legal needs and whether these needs are being adequately addressed.

(c) The task force shall submit an interim report to the legislature and the joint legislative committee on aging in place no later than twenty days prior to the convening of the 2009 regular session and a final report to the legislature and the joint legislative committee on aging in place no later than twenty days prior to June 30, 2009. The final report shall include, to the greatest extent possible:

- (1) A list of the services that exist in each county to meet grandparents' identified needs;
  - (2) A discussion of service deficiencies in each county;
  - (3) A discussion of identifiable barriers that prevent grandparents from accessing services;
  - (4) A summary of the task force's work and any findings regarding the task force's responsibilities as detailed in subsection (b); and
  - (5) Recommendations, including any proposed legislation.
- (d) The task force shall cease to exist on June 30, 2009.

## PART V. RESPITE CARE

SECTION 10. The joint legislative committee on aging in place has been diligent in its role to strengthen support to family caregivers through respite care. The legislative reference bureau conducted a study pursuant to House Concurrent Resolution No. 187 (2007), regarding how other states address the issue of respite care. The report indicates that respite is beneficial in ameliorating stress and other negative consequences of caregiving. Additionally, a comprehensive family caregiver needs assessment conducted pursuant to Act 204, Session Laws of Hawaii 2007, indicated that respite care is one of the top choices of assistance that caregivers feel would be helpful.

Respite care can relieve the everyday stress of providing round-the-clock care. However, there are times when emergency respite care becomes critical in instances where a family caregiver is unexpectedly unable to provide care because of illness, an accident, or other reasons.

The legislature finds that more needs to be done to determine the full inventory of respite care providers and the specific types of respite care provided in the State. The types of respite care can include planned respite care, short-term respite, or emergency respite care. Additionally, although respite services may be available, caregivers are not always aware that these services are offered or may not know where to go to seek assistance.

The purpose of this part is to request the executive office on aging to continue its respite inventory project pursuant to House Concurrent Resolution No. 187 (2007), in collaboration with the University of Hawaii school of social work.

SECTION 11. The executive office on aging, in collaboration with the University of Hawaii school of social work, shall:

- (1) Continue to conduct an inventory of respite services in Hawaii;
- (2) Propose a definition of "respite care";
- (3) Establish more detailed descriptions of each of the various types of respite services provided in the State; and
- (4) Review the legislative reference bureau's 2007 report on respite policies in other states to identify the most promising approaches for Hawaii to support expanding respite services, including how much support is

financed, what types of respite are provided and to whom, and who performs the respite services.

**PART VI. CARE HOME PAYMENTS**

SECTION 12. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director, pursuant to chapter 91, shall determine the rate of payment for domiciliary care, including care provided in licensed developmental disabilities domiciliary homes, community care foster family homes, and certified adult foster homes, to be provided to recipients who are eligible for Federal Supplementary Security Income or public assistance, or both. The director shall provide for level of care payment as follows:

- (1) ~~For~~ Beginning on July 1, 2008, for adult residential care homes classified as facility type I, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, community care foster family homes as defined under section 346-331, and certified adult foster homes as defined under section 321-11.2, the state supplemental payment shall not exceed ~~[\$641.90;]~~ \$651.90; and
- (2) ~~For~~ Beginning on July 1, 2008, for adult residential care homes classified as facility type II, the state supplemental payment shall not exceed ~~[\$749.90;]~~ \$759.90. [and
- (3) ~~For skilled nursing facilities and intermediate facilities, the state supplemental payment shall not exceed \$20.]~~

If the operator does not provide the quality of care consistent with the needs of the individual to the satisfaction of the department, the department may remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection shall allow the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator is agreeable to the recipient remaining, except where the recipient requires a higher level of care than provided or where the recipient no longer requires any domiciliary care.”

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$289,000 or so much thereof as may be necessary for fiscal year 2008-2009 for increases in level of care payments as provided for in this part.

The sum appropriated shall be expended by the department of human services for the purposes of this part.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2008.

(Approved July 7, 2008.)

**Note**

1. Item vetoed, replaced with “\$0”, and initialed “LL”, but see Special Session Act 11 beginning on page 947 which overrode the item veto in this Act.

## ACT 221

H.B. NO. 2727

A Bill for an Act Relating to Health Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. (a) There is established in the department of health for administrative purposes a temporary autism disorders spectrum benefits and coverage task force. The children with special health needs branch shall assist the temporary task force by providing a facilitator. The task force shall discuss and seek input on the problems faced by parents of children with autism and what can be done to ensure that proper health benefits and services are provided through public and private resources to address the special needs of children with autism, including providing services involving applied behavioral analysis techniques. In addition, the task force shall research health insurance coverage plans that cover autism spectrum disorders in other states and develop a plan of services that health insurers should be mandated to cover.

(b) The task force shall consist of nine members as follows:

- (1) A member of the house of representatives appointed by the speaker of the house of representatives;
- (2) A member of the senate appointed by the president of the senate;
- (3) The superintendent of education or the superintendent's designee;
- (4) The director of human services or the director's designee;
- (5) The director of health or the director's designee;
- (6) The insurance commissioner or the insurance commissioner's designee; and
- (7) Three members appointed by the governor from a list submitted by the speaker of the house of representatives and president of the senate, with each member representing a different organization that represents children with autistic spectrum disorder.

(c) Members of the task force shall serve without compensation and shall receive no reimbursement for expenses.

(d) The task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2009.

(e) The task force shall cease to exist on June 30, 2009.

SECTION 2. This Act shall take effect on July 1, 2008, and shall be repealed on June 30, 2009.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 222

S.B. NO. 2449

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that, during the past round of negotiations for the 2007-2009 bargaining unit (5) collective bargaining agreement, the department of education and the Hawaii state teachers association bargained and reached an agreement in good faith on a provision to reduce the probationary period for non-tenured teachers from two consecutive years (four semesters) to one year



(two semesters). Upon reaching a voluntary settlement on the unit (5) contract, the parties discovered that the negotiated provision was in direct conflict with section 302A-607, Hawaii Revised Statutes, which states in relevant part, that “[a]ll teachers, principals, and vice-principals entering the service of the department for the first time shall serve as probationary employees of the department for a minimum period of two consecutive years.”

The purpose of this Act is to repeal the statutorily established probationary provision of employment as these probationary periods are currently being, or have already been, negotiated between the department of education and the Hawaii State Teachers Association that represents bargaining unit (5) and the Hawaii Government Employees Association that represents bargaining unit (6). The department of education and the Hawaii State Teachers Association that represents bargaining unit (5) have recently clarified and simplified the process by which the probation period may be extended.

SECTION 2. Section 302A-607, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 223**

H.B. NO. 2872

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. For many decades, the State has granted permits or leases for recreation-residence use on public lands such as state parks and forest reserves for a term not to exceed 20 years. Some of these permits and leases have recently expired in state parks at Koke'e and Waimea canyon, Kaua'i, and have caused uncertainty in the process of leasing these sites.

The purpose of this Act is to establish a one-time process for the leasing of public lands for recreation-residence use leases in locations at state parks or state forest reserves in counties with a population of less than 100,000.

SECTION 2. (a) The board of land and natural resources shall negotiate directly with all existing lessees or permittees of recreation-residence use leases in locations at state parks or state forest reserves in counties with a population of less than 100,000, for lease renewals; provided that the renegotiated lease:

- (1) Shall be for a period not less than twenty years on such terms and conditions as may be prescribed by the board, pursuant to section 171-44, Hawaii Revised Statutes;
- (2) Shall be based on market rates for land and buildings, pursuant to section 171-17(b), Hawaii Revised Statutes; and
- (3) Is a “one time only” negotiation and does not ensure that there will be direct negotiations at the expiration of the renegotiated lease.

(b) Existing lessees or permittees may provide a counter-offer based upon their own certified appraisal and the board of land and natural resources shall negotiate in good faith based upon the two appraisals.

(c) The board of land and natural resources shall provide each lessee or permittee with proposed new lease terms and rates within three months of the effective date of this Act and shall negotiate final terms of each lease within four months of the effective date of this Act. The lessee or permittee shall have thirty days following the final notification to the lessee or permittee by the board of new lease terms, to agree to and sign the renegotiated lease, or the lease or permit shall expire on December 31, 2008, and the recreation-residence use lease shall be auctioned by the board.

(d) Any recreation-residence use lease for a cabin that is vacant and owned by the State on the effective date of this Act or that expires on December 31, 2008, pursuant to subsection (c), shall be auctioned by the board pursuant to section 171-14, Hawaii Revised Statutes; provided that the board of land and natural resources shall first provide bona fide full-time residents of a county in the state with a population of less than 100,000 with the opportunity to obtain any such lease by auction. If any leases remain after such an auction, the board may offer remaining available leases at auction to bidders who are bona fide full-time residents of the State of Hawaii, and then at auction to nonresidents of the State.

SECTION 3. (a) There is established a Koke'e state park advisory council, to be placed within the department of land and natural resources for administrative purposes only. The advisory council shall consist of nine voting members appointed in equal numbers by the governor, the speaker of the house of representatives and the president of the senate in accordance with section 26-34, Hawaii Revised Statutes, and four ex-officio nonvoting members.

(b) The voting members of the advisory council shall be Kaua'i residents and shall possess general knowledge of at least one of the four strategic areas listed below:

- (1) Education;
- (2) Cultural resources;
- (3) The environment; or
- (4) Native plants, animals, and ecosystems.
- (c) The ex-officio nonvoting members shall be as follows:
  - (1) A representative of the United States Fish and Wildlife Service;
  - (2) A representative of the department of land and natural resources forestry and wildlife division, as designated by the chairperson of the board of land and natural resources;
  - (3) A representative of the department of land and natural resources state parks division, as designated by the chairperson of the board of land and natural resources; and
  - (4) A representative of the county of Kauai, as designated by the Kauai county council.

(d) The voting members of the advisory council shall serve not more than two consecutive three-year terms, with each term beginning on July 1; provided that the initial terms of the appointed members that commence after June 30, 2008, shall be staggered as follows:

- (1) Three members to serve three-year terms;
- (2) Three members to serve two-year terms; and
- (3) Three members to serve a one-year term.

For the initial appointments, the governor, the president of the senate, and the speaker of the house of representatives shall designate each of their appointees to serve a one, two, or three-year term.

(e) The members of the advisory council shall not receive compensation for their services but shall be reimbursed for expenses, including travel expenses, incurred in their duties relating to the council.

(f) A chairperson shall be elected annually by the advisory council from among the council’s voting members; provided that no member may serve as chairperson for more than two consecutive years.

(g) Five voting members of the advisory council shall constitute a quorum to do business and any action taken by the advisory council shall be validated by a simple majority of the quorum.

(h) The advisory council’s responsibilities shall include:

- (1) Reviewing and assisting in updating and revising the Koke’e state park master plan;
- (2) Advising and assisting in the management of the Koke’e recreational cabin leases;
- (3) Enhancing community education and cultural awareness of Koke’e state park;
- (4) Participating in the protection and preservation of Koke’e state park’s natural and cultural resources; and
- (5) Advising and assisting in the overall implementation of the Koke’e state park master plan.

SECTION 4. The department of land and natural resources shall enforce all provisions of recreation-residential use lease agreements and shall establish a schedule of penalties and fines for any breach of the provisions of a recreation-residential use lease agreement unless penalties and fines are specified in the lease agreement.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

**ACT 224**

S.B. NO. 3255

A Bill for an Act Relating to Long Term Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I. FINDINGS AND PURPOSE**

SECTION 1. The legislature finds that virtually all of Hawaii’s elders want to age-in-place at home rather than in a care home or institution, and that many elders will require more intensive services and caregiving at the end of their lives. Over the years, a number of initiatives have been undertaken to begin the needed transformation of the services and programs that support seniors and persons with disabilities in Hawaii, such as Quest-Ex, the expansion of Kupuna Care, the Aging and Disability Resource Center, and the Going Home Program. However, the State of Hawaii has not taken a comprehensive look at needed systems reforms, nor developed a solid plan about how to prepare for the future service needs of these rapidly expanding, vulnerable populations.

The legislature further finds that the costs of institutional care have escalated beyond the financial means of most elders. The State's portion of medicaid expenditures has increased steadily over the years and is projected to increase significantly as baby boomers begin to retire. As Hawaii's population ages, the number of frail and disabled individuals will also increase, placing a precipitous demand on the need for long term care services, as well as significant cost pressures on the state budget. The legislature therefore finds that there is a need to plan for the future to make quality long term care services as accessible, efficient, and effective as possible.

The legislature further finds that it is necessary to explore public and private sector approaches to support payment for long term care services, which can assist elders to age-in-place and prevent the State from becoming fiscally liable for unsustainable costs under medicaid.

The purpose of this Act is to establish long term care policy goals and guiding principles, and establish a long term care commission to identify needed reforms of the long term care system, research program changes and resources necessary to meet the State's long term care public policy goals, and explore an array of funding options that may help support the provision of long term care services in the future.

## **PART II. LONG TERM CARE POLICY GOALS AND GUIDING PRINCIPLES**

SECTION 2. To make possible the array of services that are necessary to meet the long term care needs of Hawaii's elders and persons with disabilities, the following shall be the long term care policy goals of the State of Hawaii:

- (1) Encourage the planning of and provision for a continuum of care, up to and including the end of life;
- (2) Coordinating referral, case management, and service delivery through co-location and other means;
- (3) Strengthening family caregiver support systems to encourage aging-in-place;
- (4) Stimulating workforce development and training programs to expand the number and capabilities of long term care service providers;
- (5) Developing financial mechanisms to help Hawaii's families meet the cost of long term care;
- (6) Increasing public resources to expand home and community-based care options;
- (7) Fostering public understanding of caregiving issues; and
- (8) Encouraging research and education on aging, long term care, and related subjects through the University of Hawaii system.

SECTION 3. The development of a long term care system in Hawaii shall also be guided by the following principles:

- (1) Consumers should have as much choice as possible in the selection and use of services;
- (2) Services should be accessible and foster the level of self sufficiency desired by the consumer;
- (3) Programs and services serving all seniors and disabled populations should be accountable, cost effective, and provide quality care;
- (4) All services should be organized and administered in a way that fosters efficient use of limited state resources;
- (5) Consumers should have access to information to help them make timely and appropriate decisions when needed;

- (6) Health, long term care, and social services should be connected through the use of preadmission screening, standardized assessments, care planning, coordination, and case management; and
- (7) Technology should be used to improve accountability, efficiency, quality of care, and to help keep people in their homes.

**PART III. LONG TERM CARE COMMISSION**

SECTION 4. (a) There is established a long term care commission within the University of Hawaii college of social sciences public policy center for administrative purposes. The commission shall:

- (1) Identify problems with current long term care capacity, programs, and services;
- (2) Develop a five-year comprehensive long term care plan to accomplish long term care policy goals that, when implemented, will ensure the availability of a full continuum of institutional and community-based services, including benchmarks to evaluate accomplishments for each year;
- (3) Research public and private financing options and develop recommendations about financial resources, including a mix of public and private financing, necessary to achieve needed state long term care reforms and state public policy goals;
- (4) Monitor federal legislation for changes that may impact the program and adjust the long term care plan accordingly; and
- (5) Collaborate with interested stakeholders, including community coalitions or organizations concerned with educating the public regarding long term care.

(b) The long term care commission shall consist of:

- (1) Five members appointed by the governor;
- (2) Five members appointed by the president of the senate;
- (3) Five members appointed by the speaker of the house of representatives; and
- (4) Five non-voting, ex-officio members, who are the directors of the following departments, or their designees, and who shall collaborate with and support the work of the commission, as requested:
  - (A) Department of commerce and consumer affairs;
  - (B) Department of health;
  - (C) Department of human services;
  - (D) Department of labor and industrial relations; and
  - (E) Department of taxation.

(c) Members shall have a background in business, economics, finance, management, health care, long term care, social services, or public policy development, or be an advocate for or consumer of long term care services. Members of the commission shall be appointed as soon as practicable, but by no later than September 30, 2008. Any vacancies occurring in the membership of the commission shall be filled for the remainder of the unexpired term in the same manner as the original appointments.

(d) A simple majority of voting members shall constitute a quorum, whose affirmative vote shall be necessary for all actions.

(e) The members shall serve without compensation, but shall be allowed necessary expenses incurred in the performance of commission duties.

(f) The University of Hawaii college of social sciences public policy center shall convene the first commission meeting as soon as practicable, but by no later than November 1, 2008. At this first meeting, the commission shall elect from among

its members a chairperson, who shall convene commission meetings, and a vice chairperson, and shall adopt rules for the conduct of its work.

(g) The long term care commission shall:

- (1) Submit an interim report to the legislature no later than February 28, 2010, describing the progress made in the development of the five-year plan and preliminary proposed system reforms; and
- (2) Submit a final report to the legislature no later than September 30, 2010, which shall include the final five-year plan, how the reforms will be prioritized and phased in, and a description and final recommendations regarding the financing of long term care services, including support for caregivers.

(h) The long term care commission may:

- (1) Conduct or initiate studies as it deems necessary; and
- (2) Hire staff and contract with third parties to conduct studies, including an actuarial study, as it deems necessary for the purpose of evaluating various options about systems reforms and about how to help State residents pay for needed long term care and supportive services in the future. Any contract executed pursuant to this subsection shall be exempt from chapter 103D, Hawaii Revised Statutes; provided that any such contract is approved by the commission in an open meeting.

(i) The University of Hawaii college of social sciences public policy center shall provide administrative and policy support to facilitate the work of the long term care commission.

(j) The term of the long term care commission shall expire on November 30, 2010.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2008-2009 for the long term care commission.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 225

S.B. NO. 2833

A Bill for an Act Relating to Sustainability.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii 2050 sustainability plan is a good first step in creating a guide for government agencies, policy-makers, businesses, and community leaders. The legislature finds that the Hawaii 2050 sustainability plan needs a more definitive framework for policy-makers. The Hawaii state plan, chapter 226, Hawaii Revised Statutes, was enacted in 1978 and was developed with much more information and data to serve as a guide for policy-makers.

The purpose of this Act is to further develop the Hawaii 2050 sustainability plan to serve as a guide to policy-makers by requiring the University of Hawaii at Manoa college of social sciences public policy center to review the plan and to report to the legislature on its findings.

SECTION 2. The University of Hawaii at Manoa college of social sciences public policy center shall review the Hawaii 2050 sustainability plan. The review shall include developing defined data, data sources, and benchmarks for each of the major goals. The public policy center shall consult with leaders and organizations relevant to each of the main goals of the Hawaii 2050 sustainability plan in its review. The public policy center shall submit a report to the legislature on its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the regular session of 2010.

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**ACT 226**

S.B. NO. 2365

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I**

SECTION 1. The legislature finds that throughout the United States, approximately seventy-five airports have renovated, reconfigured, and relocated rental motor vehicle customer facilities as an appropriate means of efficiently and effectively dealing with increased demands for space. Many of these airports commonly use the collection of a rental motor vehicle customer facility charge to finance the renovation, construction, operation, and maintenance of rental motor vehicle customer facilities, and to pay for associated shuttle bus systems to transport passengers to and from these rental motor vehicle customer facilities, without adversely affecting general airport funds.

The legislature further finds that concessionaires, including rental motor vehicle companies, have historically contributed about fifty per cent or more of Hawaii's airport revenues by way of concession rental payments. These revenues have typically been used to pay for improvements for airlines, as well as some improvements for airport concessions. It is not the intent of the legislature to preclude the use of such revenues for facility improvements and other support for rental motor vehicle concessions at public airports by the passage of this Part.

It is the intent of the legislature to expedite the provision of needed rental motor vehicle customer facilities and related services that can better serve Hawaii's visitors and residents. The development of common facilities and related services has been under discussion for several years between the department of transportation and rental motor vehicle concession operators. However, given statewide airport expenditure plans and the impact of recent airline shutdowns on airport revenues, it is both timely and important to consider other options for development of common facilities and related services at Hawaii's airports.

The lack of such facilities has a detrimental effect on residents and visitors alike. For example, reports by concession operators regarding the shared storage lot for vehicles at the public airport in Kahului, Maui, indicate poor conditions have resulted in flooding and damage to vehicles stored at the lot as a result of heavy rains.

The legislature acknowledges the difficulties in achieving universal consensus on the revenue generating method in this Part. However, legislative decisions must be based on what the members deem to be in the public's best interest. As such, the legislature believes that the provisions of this Part are in keeping with the public's

best interests: to maintain and enhance services to Hawaii residents and visitors, while ensuring revenues necessary to maintain and support ongoing and future improvements to Hawaii's airport system.

The legislature's intent is to provide initial funding in amounts it deems sufficient to enable the department of transportation to accomplish the purpose of this part. In addition, the required reporting provisions will assist the legislature in monitoring expenditures and in determining any changes in future appropriations that are in keeping with the public's best interests and the purposes of this part.

The purpose of this part is to provide the department of transportation with the authority to establish and collect a rental motor vehicle customer facility charge dedicated to the renovation and development of rental motor vehicle customer facilities, including, without limitation:

- (1) Acquisition of property or property rights;
- (2) Acquisition of equipment for and operation of a unified shuttle bus system to and from passenger terminals and rental motor vehicle customer facilities; and
- (3) Design, construction, renovation, operation, and maintenance of the rental motor vehicle customer facilities and related services throughout the public airport system for the State of Hawaii.

SECTION 2. Chapter 261, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§261- Rental motor vehicle customer facility charge special fund. (a)**

There is established in the state treasury the rental motor vehicle customer facility charge special fund to be administered by the director, into which shall be deposited all proceeds from the rental motor vehicle customer facility charge.

(b) Moneys in the rental motor vehicle customer facility charge special fund shall be used for enhancement, renovation, operation, and maintenance of existing rental motor vehicle customer facilities and the development of new rental motor vehicle customer facilities and related services at state airports, including:

- (1) Acquisition and maintenance of property or property rights for rental motor vehicle purposes;
- (2) Acquisition of equipment for and operation of a unified shuttle bus system to and from passenger terminals and the rental motor vehicle customer facilities;
- (3) Consultant fees;
- (4) Management, operation, and maintenance fees for rental motor vehicle customer facilities; and
- (5) Conceptual plans, plans, design, construction, operation, and maintenance of, or allocable to, the approved rental motor vehicle customer facilities and related services.

In planning the future needs and expenditures of these moneys, the director, or deputy designated by the director, shall, at least once a year, consult with lessors, as defined in section 437D-3, who are using or who in the future may use the facilities and services. No moneys shall be expended to plan, design, improve, enhance, acquire, or construct rental motor vehicle customer facilities, equipment, or services shared or to be shared by rental motor vehicle concessions at a state airport except as determined by the director; provided that the director shall not approve the expenditure of any moneys except for planning and design purposes to improve or construct rental motor car vehicle customer facilities and related services located at an airport until a concession bid for rental motor vehicle concessions located at the public airport as of July 1, 2008, is first advertised, bid upon, and awarded by the department of transportation.



(c) The rental motor vehicle customer facility charge special fund shall be exempt from sections 36-30 and 103-8.5.”

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 **Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Funds of the employees’ retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under chapter 269;
- (16) Emergency and budget reserve fund under section 328L-3;
- (17) Public schools special fees and charges fund under section 302A-1130(f);
- (18) Sport fish special fund under section 187A-9.5;
- (19) Neurotrauma special fund under section 321H-4;
- (20) Deposit beverage container deposit special fund under section 342G-104;
- (21) Glass advance disposal fee special fund established by section 342G-82;
- (22) Center for nursing special fund under section 304A-2163;
- (23) Passenger facility charge special fund established by section 261-5.5;
- (24) Solicitation of funds for charitable purposes special fund established by section 467B-15;
- (25) Land conservation fund established by section 173A-5;
- (26) Court interpreting services revolving fund under section 607-1.5;
- (27) Trauma system special fund under section 321-22.5;
- (28) Hawaii cancer research special fund;
- (29) Community health centers special fund; ~~and~~
- (30) Emergency medical services special fund; ~~and~~
- (31) Rental motor vehicle customer facility charge special fund established under section 261- ;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assess-

ment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
  - (2) Special out-of-school time instructional program fund under section 302A-1310;
  - (3) School cafeteria special funds of the department of education;
  - (4) Special funds of the University of Hawaii;
  - (5) State educational facilities improvement special fund;
  - (6) Special funds established by section 206E-6;
  - (7) Aloha Tower fund created by section 206J-17;
  - (8) Funds of the employees’ retirement system created by section 88-109;
  - (9) Unemployment compensation fund established under section 383-121;
  - (10) Hawaii hurricane relief fund established under chapter 431P;
  - (11) Convention center enterprise special fund established under section 201B-8;
  - (12) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
  - (13) Tourism special fund established under section 201B-11;
  - (14) Universal service fund established under chapter 269;
  - (15) Emergency and budget reserve fund under section 328L-3;
  - (16) Public schools special fees and charges fund under section 302A-1130(f);
  - (17) Sport fish special fund under section 187A-9.5;
  - (18) Neurotrauma special fund under section 321H-4;
  - (19) Center for nursing special fund under section 304A-2163;
  - (20) Passenger facility charge special fund established by section 261-5.5;
  - (21) Court interpreting services revolving fund under section 607-1.5;
  - (22) Trauma system special fund under section 321-22.5;
  - (23) Hawaii cancer research special fund;
  - (24) Community health centers special fund; ~~and~~
  - (25) Emergency medical services special fund; and
  - (26) Rental motor vehicle customer facility charge special fund established under section 261-

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 5. Section 103-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a works of art special fund, into which shall be transferred one per cent of all state fund appropriations for capital improvements designated for the construction cost element; provided that this transfer shall apply only to capital improvement appropriations that are designated for the construction or renovation of state buildings. The one per cent transfer requirement shall not apply to appropriations from the passenger facility charge special fund established by section 261-5.5[;] and the rental motor vehicle customer facility charge special fund established under section 261-.”

SECTION 6. Section 261-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except for [that]:

- (1) That portion of the payments received by the department under a contract entered into as authorized by section 261-7 and deposited in the transportation use special fund pursuant to section 261D-1 [~~and except for all~~];
- (2) All proceeds from the passenger facility charge and deposited in the passenger facility charge special fund[~~]; and~~
- (3) All proceeds from the rental motor vehicle customer facility charge and deposited in the rental motor vehicle customer facility charge special fund.

all moneys received by the department from rents, fees, and other charges collected pursuant to this chapter, as well as all aviation fuel taxes paid pursuant to section 243-4(a)(2), shall be paid into the airport revenue fund created by section 248-8.

All moneys paid into the airport revenue fund shall be appropriated, applied, or expended by the department for any purpose within the jurisdiction, powers, duties, and functions of the department related to the statewide system of airports, including, without limitation, the costs of operation, maintenance, and repair of the statewide system of airports and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning for the statewide system of airports, all or any of which in the judgment of the department are necessary to the performance of its duties or functions. The department shall generate sufficient revenues from its airport properties to meet all of the expenditures of the statewide system of airports and to comply with section 39-61; provided that as long as sufficient revenues are generated to meet such expenditures, the director of transportation may, in the director’s discretion, grant a rebate of the aviation fuel taxes paid into the airport revenue fund during a fiscal year pursuant to sections 243-4(a)(2) and 248-8 to any person who has paid airport use charges or landing fees during such fiscal year. Such rebate may be granted during the next succeeding fiscal year but shall not exceed one-half cent per gallon per person, and shall be computed on the total number of gallons for which the tax was paid by such person, for such fiscal year.”

SECTION 7. Section 261-7, Hawaii Revised Statutes, is amended to read as follows:

“**§261-7 Operation and use privileges.** (a) In operating an airport or air navigation facility owned or controlled by the department of transportation, or in which it has a right or interest, the department may enter into contracts, leases, licenses, and other arrangements with any person:

- (1) Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;
- (2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility;
- (3) Making available services, facilities, goods, commodities, or other things to be furnished by the department or its agents at the airport or air navigation facility; or
- (4) Granting the use and occupancy on a temporary basis by license or otherwise any portion of the land under its jurisdiction which for the time being may not be required by the department so that it may put the area to economic use and thereby derive revenue therefrom.

All the arrangements shall contain a clause that the land may be repossessed by the department when needed for aeronautics purposes upon giving the tenant temporarily occupying the same not less than thirty days' notice in writing of intention to repossess.

(b) Except as otherwise provided in this section, in each case mentioned in subsection (a)(1), (2), (3), and (4), the department may establish the terms and conditions of the contract, lease, license, or other arrangement, and may fix the charges, rentals, or fees for the privileges, services, or things granted, conferred, or made available, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature. Such charges shall be reasonable and uniform for the same class of privilege, service, or thing.

(c) The department shall enter into a contract with no more than one person ("contractor") for the sale and delivery of in-bond merchandise at Honolulu International Airport, in the manner provided by law. The contract shall confer the right to operate and maintain commercial facilities within the airport for the sale of in-bond merchandise and the right to deliver to the airport in-bond merchandise for sale to departing foreign-bound passengers.

The department shall grant the contract pursuant to the laws of this State and may take into consideration:

- (1) The payment to be made on in-bond merchandise sold at Honolulu International Airport and on in-bond merchandise displayed or sold elsewhere in the [State] state and delivered to the airport;
- (2) The ability of the applicant to comply with all federal and state rules and regulations concerning the sale and delivery of in-bond merchandise; and
- (3) The reputation, experience, and financial capability of the applicant.

The department shall actively supervise the operation of the contractor to [insure] ensure its effectiveness. The department shall develop and implement such guidelines as it may find necessary and proper to actively supervise the operations of the contractor, and shall include guidelines relating to the department's review of the reasonableness of contractor's price schedules, quality of merchandise, merchandise assortment, operations, and service to customers.

Apart from the contract described in this subsection, the department shall confer no right upon nor suffer nor allow any person to offer to sell, sell, or deliver in-bond merchandise at Honolulu International Airport; provided that this section shall not prohibit the delivery of in-bond merchandise as cargo to the Honolulu International Airport.

(d) The department, by contract, lease, or other arrangement, upon a consideration fixed by it, may grant to any qualified person the privilege of operating, as agent of the State or otherwise, any airport owned or controlled by the department; provided that no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the department might not have undertaken under subsection (a).

(e) The department may fix and regulate, from time to time, reasonable landing fees for aircraft, including the imposition of landing surcharges or differential landing fees, and other reasonable charges for the use and enjoyment of the airports and the services and facilities furnished by the department in connection therewith, including the establishment of a statewide system of airports landing fees, a statewide system of airports support charges, and joint use charges for the use of space shared by users, which fees and charges may vary among different classes of users such as foreign carriers, domestic carriers, inter-island carriers, air taxi operators, helicopters, and such other classes as may be determined by the director, for the

purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature.

In setting airports rates and charges, including landing fees, the director may enter into contracts, leases, licenses, and other agreements with aeronautical users of the statewide system of airports containing such terms, conditions, and provisions as the director deems advisable.

If the director has not entered into contracts, leases, licenses, and other agreements with any or fewer than all of the aeronautical users of the statewide system of airports prior to the expiration of an existing contract, lease, license, or agreement, the director shall set and impose rates, rentals, fees, and charges pursuant to this subsection without regard to the requirements of chapter 91; provided that a public informational hearing shall be held on the rates, rentals, fees, and charges.

The director shall develop rates, rentals, fees, and charges in accordance with a residual methodology so that the statewide system of airports shall be, and always remain, self-sustaining. The rates, rentals, fees, and charges shall be set at such levels as to produce revenues which, together with aviation fuel taxes, shall be at least sufficient to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds.

The director may develop and formulate methodology in setting the various rates, rentals, fees, and charges imposed and may determine usage of space, estimate landed weights, and apply such portion of nonaeronautical revenue deemed appropriate in determining the rates, rentals, fees, and charges applicable to aeronautical users of the statewide system of airports.

The rates, rentals, fees, and charges determined by the director in the manner set forth in this subsection shall be those charges payable by the aeronautical users for the periods immediately following the date of expiration of the existing contract, lease, license, or agreement. If fees are established pursuant to this section, the department shall prepare a detailed report on the circumstances and rates and charges that have been established, and shall submit the report to the legislature no later than twenty days prior to the convening of the next regular session.

If a schedule of rates, rentals, fees, and charges developed by the director in accordance with this section is projected by the department to produce revenues which, together with aviation fuel taxes, will be in excess of the amount required to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds, the department shall submit the schedule of rates, rentals, fees, and charges to the legislature prior to the convening of the next regular session of the legislature. Within forty-five days after the convening of the regular session, the legislature may disapprove any schedule of rates, rentals, fees, and charges required to be submitted to it by this section by concurrent resolution. If no action is taken by the legislature within the forty-five-day period the schedule of rates, rentals, fees, and charges shall be deemed approved. If the legislature disapproves the schedule within the forty-five-day period, the director shall develop a new schedule of rates, rentals, fees, and charges in accordance with this section within seventy-five days of the disapproval. Pending the development of a new schedule of rates, rentals, fees, and charges, the schedule submitted to the legislature shall remain in force and effect.

Notwithstanding any other provision of law to the contrary, the department may waive landing fees and other aircraft charges established under this section at any airport owned or controlled by the State whenever:

- (1) The governor declares a state of emergency; and

(2) The department determines that the waiver of landing fees and other charges for the aircraft is consistent with assisting in the delivery of humanitarian relief to disaster-stricken areas of the [State-] state.

(f) To enforce the payment of any charges for repairs or improvements to, or storage or care of any personal property made or furnished by the department or its agent in connection with the operation of an airport or air navigation facility owned or operated by the department, the department shall have liens on the property, which shall be enforceable by it as provided by sections 507-18 to 507-22.

(g) The department from time to time may establish developmental rates for buildings and land areas used exclusively for general aviation activities at rates not less than fifty per cent of the fair market rentals of the buildings and land areas and may restrict the extent of buildings and land areas to be ~~utilized-~~ used.

(h) Notwithstanding any laws to the contrary, the department may establish, levy, assess, and collect rental motor vehicle customer facility charges, which shall be paid to the department periodically as determined by the department. These charges shall be used to pay for, or finance on a long-term basis where appropriate, the design, planning, construction, and other uses of the rental motor vehicle customer facility charges as set forth by the rental motor vehicle customer facility charge special fund in section 261- .

The rental motor vehicle customer facility charges shall be levied, assessed, and collected from all rental motor vehicle customers who benefit from the use of any type of rental motor vehicle facility or service provided by the department at a state airport.

All rental motor vehicle customer facility charges shall be collected by lessors as defined in section 437D-3 and who operate a car rental concession awarded by the department at a state airport; provided that customers of lessors, as defined in section 437D-3, who do not operate a car rental concession at a state airport but whose customers benefit from the use of a car rental facility or service at a state airport paid for by rental motor vehicle customer facility charges, shall collect from such car rental customers, rental motor vehicle customer facility charges in an amount determined by the department that represents a fair share of the cost and ongoing expenses relating to customer use of such a facility or service. All rental motor vehicle customer facility charges collected by such lessor shall be paid to the department.

Notwithstanding any law to the contrary, the department may contract the management, maintenance, and operations of the facility and related services with airport concessions or their designee that share in the use of a rental motor vehicle customer facility at a state airport.”

SECTION 8. Section 437D-8.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any law to the contrary, a lessor may visibly pass on to a lessee:

- (1) The general excise tax attributable to the transaction;
- (2) The vehicle license and registration fee and weight taxes, prorated at 1/365th of the annual vehicle license and registration fee and weight taxes actually paid on the particular vehicle being rented for each full or partial ~~twenty-four hour~~ twenty-four-hour rental day that the vehicle is rented; provided the total of all vehicle license and registration fees charged to all lessees shall not exceed the annual vehicle license and registration fee actually paid for the particular vehicle rented;
- (3) The rental motor vehicle surcharge tax as provided in section 251-2 attributable to the transaction;
- (4) The county surcharge on state tax under section 46-16.8; provided that the lessor itemizes the tax for the lessee; and

- (5) The rents or fees paid to the department of transportation under concession contracts<sup>[5]</sup> negotiated pursuant to chapter 102, ~~or~~ service permits<sup>[5]</sup> granted pursuant to title 19, Hawaii Administrative Rules, or rental motor vehicle customer facility charges established pursuant to section 261-7; provided that:
- (A) The rents or fees are limited to amounts that can be attributed to the proceeds of the particular transaction;
  - (B) The rents or fees shall not exceed the lessor's net payments to the department of transportation made under concession contract or service permit;
  - (C) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts of the rents or fees paid to the department of transportation pursuant to the applicable concession contract or service permit:
    - (i) For all airport locations; and
    - (ii) For each airport location;
  - (D) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts charged to lessees:
    - (i) For all airport locations;
    - (ii) For each airport location; and
    - (iii) For each lessee;
  - (E) The lessor includes in these reports the methodology used to determine the amount of fees charged to each lessee; and
  - (F) The lessor submits the above information to the department of transportation and the department of commerce and consumer affairs within three months of the end of the preceding annual accounting period or contract year as determined by the applicable concession agreement or service permit.

The respective departments, in their sole discretion, may extend the time to submit the statement required in this subsection. If the director determines that an examination of the lessor's information is inappropriate under this subsection and the lessor fails to correct the matter within ninety days, the director may conduct an examination and charge a lessor an examination fee based upon the cost per hour per examiner for evaluating, investigating, and verifying compliance with this subsection, as well as additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination, which shall relate solely to the requirements of this subsection, and which shall be billed by the departments as soon as feasible after the close of the examination. The cost per hour shall be \$40 or as may be established by rules adopted by the director. The lessor shall pay the amounts billed within thirty days following the billing. All moneys collected by the director shall be credited to the compliance resolution fund."

SECTION 9. Notwithstanding section 7 of this Act, the department of transportation, as of September 1, 2008, shall levy, assess, and collect a rental motor vehicle customer facility charge of \$1 per day, or any portion of a day that a rental motor vehicle is rented or leased, by a rental motor vehicle concession where customers pick up and return rental vehicles to a facility at a state airport as determined by the director. Moneys shall continue to be collected only until such time that the sum of

\$25,000,000 is collected and deposited into the rental motor vehicle customer facility charge special fund. The provisions of this section shall not impair, limit, or restrict the department of transportation from levying, assessing, establishing, and collecting rental motor vehicle customer facility charges as set forth in section 7 of this Act.

SECTION 10. There is appropriated out of the rental motor vehicle customer facility charge special fund established by section 261- , Hawaii Revised Statutes, the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 for the:

- (1) Planning, conceptual design, and design of rental motor vehicle customer facilities at state airports and related services; and
- (2) Planning, conceptual design, design, and improvement, pavement, lighting, construction, and fencing to an existing ground-level storage area shared by rental motor vehicle concessions at the state airport located in Kahului, Maui.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 11. The department of transportation shall submit at least annual reports to the legislature relating to its activities for the purposes of this Act. The reports shall provide information and documents including, but not limited to:

- (1) A timeline for any expenditures and a description of any projects relating to the expenditures;
- (2) A timeline for the commencement date and completion date for any project;
- (3) A description with an appropriate plan or drawing identifying the location of any project;
- (4) Cost estimates for each project, including but not limited to planning, design, purchase, and construction costs and a timeline for the expenditures; and
- (5) The priority ranking for each project with commencement and completion dates.

The annual report shall be submitted to the legislature no later than twenty days prior to the convening of the regular session of the legislature, beginning with the regular session of 2009, and continuing through the regular session of 2018.

## PART II

SECTION 12. The purpose of this part is to:

- (1) Extend until August 31, 2011, the \$3 a day rate of the rental motor vehicle surcharge tax; and
- (2) Require the department of transportation to report additional revenue-generating initiatives to the legislature.

SECTION 13. Section 251-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is levied and shall be assessed and collected each month a rental motor vehicle surcharge tax of \$2 a day, except that for the period of September 1, 1999, to August 31, [~~2008;~~] 2011, the tax shall be \$3 a day, or any portion of a day that a rental motor vehicle is rented or leased. The rental motor vehicle surcharge tax shall be levied upon the lessor; provided that the tax shall not be levied on the lessor if:

- (1) The lessor is renting the vehicle to replace a vehicle of the lessee that is being repaired; and



- (2) A record of the repair order for the vehicle is retained either by the lessor for two years for verification purposes or by a motor vehicle repair dealer for two years as provided in section 437B-16.”

SECTION 14. The department of transportation shall provide recommendations to the legislature for additional revenue-generating initiatives that will replenish the state highway fund, created by section 248-8, Hawaii Revised Statutes, no later than twenty days prior to the convening of the regular session of 2009.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 16. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 227

S.B. NO. 2314

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The insurance commissioner has recently chosen to interpret Hawaii law as prohibiting the combination of different types of accident and health or sickness insurance benefits within the same policy, as a violation of anti-tying statutes described in section 431:13-103(a)(4)(B), Hawaii Revised Statutes. The legislature, recognizing that access to affordable health insurance is one of the state’s most pressing concerns, finds that small accident and health or sickness insurers lack coercive power and that a prohibition on tying arrangements by small insurers harms consumers by preventing small insurers from offering different types of benefits in a single unified policy. Accordingly, this Act provides the insurance division in the department of commerce and consumer affairs with the authority and duty to allow broader combinations of health insurance benefits in Hawaii.

The legislature finds that comparable federal antitrust laws regarding anti-tying only apply to companies that occupy 30 per cent or more of the market. In the seminal decision of *Jefferson Parish Hospital v. Hyde*, 466 U.S. 2 (1984), the United States Supreme Court held that under the Sherman Act, Jefferson Hospital had no market power with an assumed market share of 30 per cent, and therefore its tying arrangement was not unlawful. See *Hovenkamp*, Federal Antitrust Policy (3d edition, 2005) 402; *Hack v. President and Fellows of Yale College*, 237 F.3d 81 (2d Cir. 2000); *Marts v. Xerox*, 77 F.3d 1109, 1113 n.6 (8th Cir. 1996) (18 per cent too small); *Shafi v. St. Francis Hosp.*, 937 F.2d 603 (4th Cir. 1991) (11 per cent insufficient); and *Grappone, Inc., v. Subaru of New England, Inc.*, 858 F.2d 792, 797 (1st Cir. 1988) (recognizing a general rule of at least 30 per cent). Hence, federal antitrust law reflects the overarching policy and recognition that small insurers are essential in providing consumers with coverage options and that they operate under more significant market constraints than larger insurers.

The purpose of this Act is to adopt the foregoing well-settled federal standards and thereby validate and encourage the long-standing practice of smaller accident

and health or sickness insurers, who lack coercive power in the marketplace, of “bundling” different classes of insurance, such as health, dental, and vision together. Under these circumstances, bundling provides broader health care coverage in single unified policies, ultimately resulting in lower overall premiums, fostering greater competition within the Hawaii insurance marketplace, and providing consumers with greater flexibility, coverage, and pricing options.

SECTION 2. Section 431:13-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
  - (A) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;
  - (B) Misrepresents the dividends or share of the surplus to be received on any insurance policy;
  - (C) Makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;
  - (D) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;
  - (E) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;
  - (F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;
  - (G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy;
  - (H) Misrepresents any insurance policy as being shares of stock;
  - (I) Publishes or advertises the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of the insurer, both as shown by its last annual statement; or
  - (J) Publishes or advertises the capital of any insurer without stating specifically the amount of paid-in and subscribed capital;
- (2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person’s insurance business, which is untrue, deceptive, or misleading;
- (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance;

- (4) Boycott, coercion, and intimidation.
  - (A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance; or
  - (B) Entering into any agreement on the condition, agreement, or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer; provided that this subparagraph shall not apply to any insurer subject to chapter 432 with less than five per cent of the health insurance market share, offering contracts for dental, vision, drug, and life insurance as a condition, agreement, or understanding to a health insurance policy pursuant to chapter 432;
- (5) False financial statements.
  - (A) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of a material fact as to the financial condition of an insurer; or
  - (B) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, knowingly omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer;
- (6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;
- (7) Unfair discrimination.
  - (A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any policy of life insurance or annuity contract or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract;
  - (B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder;
  - (C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the

- amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:
- (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or
  - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
- (D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:
- (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or
  - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
- (E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits;
- (F) Terminating or modifying coverage, or refusing to issue or renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subparagraph shall not apply to accident and health or sickness insurance sold by a casualty insurer; provided further that this subparagraph shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract;
- (G) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual based solely upon the individual's having taken a human immunodeficiency virus (HIV) test prior to applying for insurance; or
- (H) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because the individual refuses to consent to the release of information which is confidential as provided in section 325-101; provided that nothing in this subparagraph shall prohibit an insurer from obtaining and using the results of a test satisfying the requirements of the commissioner, which was taken with the consent of an applicant for insurance; provided further that any applicant for insurance who is tested for HIV infection shall be afforded the opportunity to obtain the test results, within a reasonable time after being tested, and that the confidentiality of the test results shall be maintained as provided by section 325-101;
- (8) Rebates. Except as otherwise expressly provided by law:
- (A) Knowingly permitting or offering to make or making any contract of insurance, or agreement as to the contract other than as plainly expressed in the contract, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement

to the insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits, or any valuable consideration or inducement not specified in the contract; or

- (B) Giving, selling, or purchasing, or offering to give, sell, or purchase as inducement to the insurance or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract;
- (9) Nothing in paragraph (7) or (8) shall be construed as including within the definition of discrimination or rebates any of the following practices:
- (A) In the case of any life insurance policy or annuity contract, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any bonus or abatement of premiums shall be fair and equitable to policyholders and in the best interests of the insurer and its policyholders;
  - (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;
  - (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year; and
  - (D) In the case of any contract of insurance, the distribution of savings, earnings, or surplus equitably among a class of policyholders, all in accordance with this article;
- (10) Refusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages; provided that:
- (A) Where damages are recovered by judgment or settlement of a third-party claim, reimbursement of past benefits paid shall be allowed pursuant to section 663-10;
  - (B) This paragraph shall not apply to entities licensed under chapter 386 or 431:10C; and
  - (C) For entities licensed under chapter 432 or 432D:
    - (i) It shall not be a violation of this section to refuse to provide or limit coverage available to an individual because the entity determines that the individual reasonably appears to have coverage available under chapter 386 or 431:10C; and
    - (ii) Payment of claims to an individual who may have a third-party claim for recovery of damages may be conditioned upon the individual first signing and submitting to the entity documents to secure the lien and reimbursement rights of the entity and providing information reasonably related to the entity's investigation of its liability for coverage.

Any individual who knows or reasonably should know that the individual may have a third-party claim for recovery of damages and who fails to provide timely notice of the potential claim to the entity, shall be deemed to have waived the prohibition of this paragraph against refusal or limitation of coverage. "Third-party

claim” for purposes of this paragraph means any tort claim for monetary recovery or damages that the individual has against any person, entity, or insurer, other than the entity licensed under chapter 432 or 432D;

- (11) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:
- (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
  - (B) With respect to claims arising under its policies, failing to respond with reasonable promptness, in no case more than fifteen working days, to communications received from:
    - (i) The insurer’s policyholder;
    - (ii) Any other persons, including the commissioner; or
    - (iii) The insurer of a person involved in an incident in which the insurer’s policyholder is also involved.

The response shall be more than an acknowledgment that such person’s communication has been received, and shall adequately address the concerns stated in the communication;

- (C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- (D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- (E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- (F) Failing to offer payment within thirty calendar days of affirmation of liability, if the amount of the claim has been determined and is not in dispute;
- (G) Failing to provide the insured, or when applicable the insured’s beneficiary, with a reasonable written explanation for any delay, on every claim remaining unresolved for thirty calendar days from the date it was reported;
- (H) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
- (I) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
- (J) Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (K) Attempting to settle claims on the basis of an application which was altered without notice, knowledge, or consent of the insured;
- (L) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
- (M) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
- (N) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission

- of formal proof of loss forms, both of which submissions contain substantially the same information;
- (O) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage to influence settlements under other portions of the insurance policy coverage;
  - (P) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; and
  - (Q) Indicating to the insured on any payment draft, check, or in any accompanying letter that the payment is “final” or is “a release” of any claim if additional benefits relating to the claim are probable under coverages afforded by the policy; unless the policy limit has been paid or there is a bona fide dispute over either the coverage or the amount payable under the policy;
- (12) Failure to maintain complaint handling procedures. Failure of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination under section 431:2-302. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this section, “complaint” means any written communication primarily expressing a grievance;
  - (13) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, producer, or individual; and
  - (14) Failure to obtain information. Failure of any insurance producer, or an insurer where no producer is involved, to comply with section 431:10D-623(a), (b), or (c) by making reasonable efforts to obtain information about a consumer before making a recommendation to the consumer to purchase or exchange an annuity.”

SECTION 3. The auditor shall perform an analysis of the effects of the provisions contained in this Act and submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2010.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval, and shall be repealed on June 30, 2011.

(Became law on July 8, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

**ACT 228**

H.B. NO. 2486

A Bill for an Act Relating to Historic Preservation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§46- Photographs of historic property.** Notwithstanding any other law to the contrary, each county agency that issues building, construction, or development-related permits shall not issue any permit allowing the demolition, construction, or other alteration of a historic building until after a permit applicant provides proof of having provided the department of land and natural resources with archival quality black and white photographs of the historic building, as required under chapter 6E.”

SECTION 2. Section 6E-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property, aviation artifact, or a burial site, the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. The proposed project shall not be commenced, or in the event it has already begun, continued, until the department shall have given its written concurrence. In the case of any building that is eligible for listing or is listed on the Hawaii or national register of historic places, no demolition, construction, or other alteration of the building shall occur until after the responsible agency, officer, or county has transmitted archival quality black and white photographs of the historic building to the department.

The department is to provide written concurrence or non-concurrence within ninety days after the filing of a request with the department. The agency or officer seeking to proceed with the project, or any person, may appeal the department’s concurrence or non-concurrence to the Hawaii historic places review board. An agency, officer, or other person who is dissatisfied with the decision of the review board may apply to the governor, who may request the Hawaii advisory council on historic preservation to report or who may take action as the governor deems best in overruling or sustaining the department.”

SECTION 3. Section 6E-10, Hawaii Revised Statutes, is amended to read as follows:

**“§6E-10 Privately owned historic property.** (a) Before any construction, alteration, disposition or improvement of any nature, by, for, or permitted by a private landowner may be commenced which will affect an historic property on the Hawaii register of historic places, the landowner shall notify the department of the construction, alteration, disposition, or improvement of any nature and allow the department opportunity for review of the effect of the proposed construction, alteration, disposition, or improvement of any nature on the historic property. The proposed construction, alteration, disposition, or improvement of any nature shall not be commenced, or in the event it has already begun, continue, until the department shall have given its concurrence or ninety days have elapsed. Within ninety days after notification, the department shall:

- (1) Commence condemnation proceedings for the purchase of the historic property if the department and property owner do not agree upon an appropriate course of action;
- (2) Permit the owner to proceed with the owner’s construction, alteration, or improvement; or
- (3) In coordination with the owner, undertake or permit the investigation, recording, preservation, and salvage of any historical information deemed necessary to preserve Hawaiian history, by any qualified agency for this purpose.



(b) In the case of any building over fifty years old, no demolition, construction, or other alteration of the building shall occur until after the owner has transmitted to the department, at the owner's expense, archival quality black and white photographs of the building.

~~(b)~~ (c) Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any feature in or on an historic property that does not involve a change in design, material, or outer appearance or change in those characteristics which qualified the historic property for entry onto the Hawaii register of historic places.

~~(c)~~ (d) Any person, natural or corporate, who violates the provisions of this section shall be fined not more than \$1,000, and each day of continued violation shall constitute a distinct and separate offense under this section for which the offender may be punished.

~~(d)~~ (e) If funds for the acquisition of needed property are not available, the governor may, upon the recommendation of the department allocate from the contingency fund an amount sufficient to acquire an option on the property or for the immediate acquisition, preservation, restoration, or operation of the property.

~~(e)~~ (f) The department may enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. Whenever any member of the department duly authorized to conduct investigations and surveys of an historic or cultural nature determines that entry onto private lands for examination or survey of historic or cultural finding is required, the department shall give written notice of the finding to the owner or occupant of such property at least five days prior to entry. If entry is refused, the member may make a complaint to the district court in the circuit in which such land is located. The district court may thereupon issue a warrant, directed to any police officer of the circuit, commanding the officer to take sufficient aid, and, being accompanied by a member of the department, between the hours of sunrise and sunset, allow the member of the department to examine or survey the historic or cultural property.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 229**

S.B. NO. 2041

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In the past, the legislature has recognized the importance of medicaid coverage for the State's most vulnerable populations, and has acted to ensure that health care payments made with state funds or controlled by the State are sufficient to cover the actual costs of the care provided. Through the continued efforts of Hawaii's congressional delegation, a second federal medicaid disproportionate share hospital (DSH) appropriation of \$7,500,000 has been secured for Hawaii for

2008. State funds are needed to match this grant. Together, the combined funding shall help to provide continuing health care in our communities.

The purpose of this Act is to meet rising health care costs and ensure that Hawaii's residents have continued access to quality health care by appropriating funds for the State's portion of the federal disproportionate share hospital allowance.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,774,340 or so much thereof as may be necessary for fiscal year 2008-2009 for the State's portion of the federal disproportionate share hospital allowance.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 230

H.B. NO. 2781

A Bill for an Act Relating to Small Business.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that small businesses are an essential element in strengthening and diversifying Hawaii's economy and creating jobs for our people. To help ensure that they can achieve this goal, a "small business bill of rights" would afford small businesses equal and fair treatment, as well as reduce the numerous roadblocks to business success, which will inevitably lead to more investment and job growth in Hawaii.

The legislature also finds that in the past decade, states adopting a less burdensome method of issuing permits and enforcing laws have obtained more cooperation and have increased regulatory compliance by working in partnership with businesses. Because the regulatory system is often driven by a "fine-and-punishment" approach, state agencies and private businesses often are unnecessarily antagonistic. The small business regulatory review board was established by the legislature in 1998 to address these concerns. It works closely with state and county agencies to adopt rules that help reduce the regulatory burden. A "bill of rights" is an essential part of the review process.

Additionally, the legislature finds that to ensure that state administrative rules remain relevant to evolving business practices and conditions, a "sunset" process for review of state administrative rules should be put into effect. Every administrative rule maintained by any state agency should be reviewed, updated, and, if appropriate, eliminated by that agency. The small business regulatory review board should assist in that process by reviewing on a periodic basis existing rules to ensure that more innovative approaches to business regulation are fully considered.

"Small business," meaning any legal entity that is independently owned and operated and employs not more than 100 full-time employees, is the backbone of Hawaii's economy, and is central to Hawaii's way of life. More than 95 per cent of all Hawaii establishments are small businesses, and they provide jobs for 60 per cent of all Hawaii employees. Accordingly, future growth in Hawaii's workforce will come primarily from new, homegrown businesses and from existing small businesses that hire new workers.

Hawaii residents should be able to enjoy a business culture that encourages and supports small business. Hawaii currently has the natural, technical, and human resources to ensure that every person who wants to work can achieve meaningful employment and that every company has access to what it needs not only to survive but also to thrive.

The purpose of this Act is to:

- (1) Set forth specific “rights” that small businesses should have and to allow them to achieve success for themselves and their employees for the good of all the people of Hawaii;
- (2) Require agencies to perform and include in their small business impact statement for proposed rules, a more rigorous examination and justification of rules that impose standards more stringent than those mandated by any comparable or related federal, state, or county laws; and
- (3) Require the small business regulatory review board to convene a working group to review the process and procedures related to rulemaking, as established under chapter 201M, Hawaii Revised Statutes.

## PART I

SECTION 2. The rights of small businesses in the State of Hawaii include but are not limited to:

- (1) The right to expect state agencies to provide a prompt, accurate, and courteous response to a request for information and to work together to ensure ready access to the information needed to assist businesses in their relationships with state government;
- (2) The right to a clear, stable, and predictable regulatory and record-keeping environment with easily accessible information and administrative rules in as clear and concise language as is practicable, including the posting of all proposed administrative rule changes on the Internet website of the office of the lieutenant governor;
- (3) The right to request and receive timely notice of an agency’s rulemaking proceedings. The notice should be mailed to all persons who have made a written request for such a notice;
- (4) The right to be treated equally and fairly, with reasonable access to state services;
- (5) The right to a one-stop permitting process that will, in the long term, include a centralized Internet website-based application system. This site’s goals are to have quick and responsible timeframes to process state and county permits, licenses, registrations, and approvals, when appropriate, to simplify and reduce the filing of forms affecting business;
- (6) The right to a timely response to an application for a permit, license, registration, or approval necessary to operate the small business, within the established maximum period of time for that agency in accordance with section 91-13.5, Hawaii Revised Statutes;
- (7) The right to renewal of essential permits, licenses, registrations, or approvals, absent a specific reason for nonrenewal. All issuing agencies shall take action to grant or deny any renewal application for a business or development-related permit, license, registration, or approval within the established maximum period of time for that agency. The reasons for a denial should be clearly stated and under conditions set forth in law;
- (8) Whenever a contested case hearing is provided by law, in the event a regulatory agency takes action against a business, the right to expect a timely hearing. Officials conducting such hearings should be impartial.

Small businesses should be provided a full and complete hearing to present their explanation of any alleged violation, deficiency, or wrongdoing. In any hearing, there should be a presumption that the small business did not commit an alleged violation or wrongdoing until the agency proves otherwise by a preponderance of the evidence. The small business should have the right to present evidence, both oral and written. This evidence must be fully considered by the agency. In the event of an unfavorable decision, the business should have the right to a judicial review pursuant to section 91-14, Hawaii Revised Statutes;

- (9) The right to privacy regarding confidential and proprietary business information when competing for state procurement contracts. No state agency shall mandate the disclosure of confidential or proprietary business information as a condition of obtaining any contract or payment under any contract when a contract is to be awarded on a firm fixed price or cost plus fixed price basis;
- (10) The right to all of the protections afforded in the Taxpayer Bill of Rights, P.L. 104-168;
- (11) The right to submit complaints regarding a violation of these rights or any other administrative acts of state and county agencies with the office of the ombudsman, in accordance with chapter 96, Hawaii Revised Statutes;
- (12) The right to request information and an opinion from the office of information practices, in accordance with chapters 92 and 92F, Hawaii Revised Statutes, with regard to access to information from public meetings or the release of government documents;
- (13) The right to provide information to the division of consumer advocacy in accordance with chapter 269, Hawaii Revised Statutes, with regard to issues under the purview of the public utilities commission;
- (14) The right to request information from the office of consumer protection, in accordance with chapter 487, Hawaii Revised Statutes, with regard to business and consumer issues;
- (15) The right to access the small business advocate in the department of business, economic development, and tourism regarding any dispute with a state agency to ensure government resources are coordinated on behalf of small business and the rights of businesses are being upheld; and
- (16) The right to administrative rule review pursuant to the Small Business Regulatory Flexibility Act by filing a petition with the small business regulatory review board in accordance with section 201M-6, Hawaii Revised Statutes.

## PART II

SECTION 3. Section 201M-2, Hawaii Revised Statutes, is amended to read as follows:

**“§201M-2 Determination of small business impact; small business impact statement.** (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.

(b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and pre-

pare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the board when the rules are essentially complete and before the rules are submitted to the governor for approval for public hearing. The statement shall provide a reasonable determination of the following:

- (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
- (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
- (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
- (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
- (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
- (6) How the agency involved small business in the development of the proposed rules; and
- (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

(c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state, or county law. The agency shall also include an explanation of its decision to impose the higher standard. The agency's comparison and justification shall include:

- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
- (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
- (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
- (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state, or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
- (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.

[(e)] (d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or de-

scribe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives.”

### PART III

SECTION 4. (a) The small business regulatory review board shall convene a working group to review the process and procedures related to rulemaking, as established under chapter 201M, Hawaii Revised Statutes.

(b) The working group shall include but not be limited to representatives of small business organizations, the department of business, economic development, and tourism, the department of commerce and consumer affairs, and others as deemed appropriate. The chairperson of the small business regulatory review board shall serve as chair of the working group.

(c) The working group shall review and make recommendations regarding the rulemaking provisions under chapter 201M, Hawaii Revised Statutes, in particular:

- (1) Whether the current statutes are adequate to meet the concerns of small business;
- (2) What concerns have been raised by small businesses, the small business regulatory review board, or government agencies in implementing the statutes;
- (3) The level of difficulty in adequately meeting the requirements of the statutes; and
- (4) Any other issues that may arise during the review.

(d) The small business regulatory review board shall submit the findings and recommendations of the working group, including any legislation necessary to implement the recommendations, to the legislature no later than twenty days prior to the convening of the regular session of 2009.

### PART IV

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 231

S.B. NO. 1804

A Bill for an Act Relating to the Trauma System Special Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to part I, to be appropriately designated and to read as follows:

**“§291- Trauma system surcharge.** (a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

- (1) The maximum of which may be \$10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense; and
  - (2) The maximum of which may be \$100 if the violation is an offense under section 291-12.
- (b) The surcharge shall not be ordered when the court determines that the defendant is unable to pay the surcharge.
- (c) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the state director of finance who shall transmit the surcharge to the trauma system special fund pursuant to section 321-22.5.”

SECTION 2. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to part I, to be appropriately designated and to read as follows:

**“§291C- Trauma system surcharge.** (a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

- (1) The maximum of which may be \$10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense;
  - (2) The maximum of which may be \$100 if the violation is an offense under sections 291C-12.6, 291C-13, 291C-14, 291C-15, 291C-16, 291C-103, 291C-104, or 291C-105;
  - (3) The maximum of which may be \$500 if the violation is an offense under section 291C-12; and
  - (4) The maximum of which may be \$250 if the violation is an offense under section 291C-12.5.
- (b) The surcharge shall not be ordered when the court determines that the defendant is unable to pay the surcharge.
- (c) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the state director of finance who shall transmit the surcharge to the trauma system special fund pursuant to section 321-22.5.”

SECTION 3. Chapter 291E, Hawaii Revised Statutes, is amended by adding a new section to part I, to be appropriately designated and to read as follows:

**“§291E- Trauma system surcharge.** (a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

- (1) The maximum of which may be \$10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense;
  - (2) The maximum of which may be \$25 if the violation is an offense under sections 291E-61(a)(1), 291E-61(a)(3), or 291E-61(a)(4);
  - (3) The maximum of which may be \$50 if the violation is an offense under sections 291E-61(a)(2), or 291E-61.5 or the offense under 291E-61(a)(3) or 291E-61(a)(4) was committed by a highly intoxicated driver as defined by section 291E-1, or if the offense under 291E-61(a)(3) or 291E-61(a)(4) is a second or subsequent offense that occurred within five years of the first offense.
- (b) The surcharge shall not be ordered when the court determines that the defendant is unable to pay the surcharge.

(c) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the state director of finance who shall transmit the surcharge to the trauma system special fund pursuant to section 321-22.5.”

## PART II

SECTION 4. Section 291-11.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Violation of this section shall be considered an offense as defined under section 701-107(5) and shall subject the violator to the following penalties:

- (1) For a first conviction, the person shall:
  - (A) Be fined not more than \$100;
  - (B) Be required by the court to attend a child passenger restraint system safety class conducted by the division of driver education; provided that:
    - (i) The class may include video conferences as determined by the administrator of the division of driver education as an alternative method of education; and
    - (ii) The class shall not exceed four hours;
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3; and
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund;
  - (E) Pay up to a \$10 surcharge to be deposited into the trauma system fund if the court so orders;
- (2) For a conviction of a second offense committed within three years of any other conviction under this section, the person shall:
  - (A) Be fined not less than \$100 but not more than \$200;
  - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class;
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education; and
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund;
  - (E) Pay up to a \$10 surcharge to be deposited into the trauma system fund if the court so orders; and
- (3) For a conviction of a third or subsequent offense committed within three years of any other conviction under this section, the person shall:
  - (A) Be fined not less than \$200 but not more than \$500;
  - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class;
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education; and
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund;<sup>1</sup>



- (E) Pay up to a \$10 surcharge to be deposited into the trauma system fund if the court so orders.”

SECTION 5. Section 291-11.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) A person who fails to comply with the requirements of this section shall be subject to a fine of \$45 for each violation ~~and~~<sup>2</sup>, a surcharge of \$10 which shall be deposited into the neurotrauma special fund, and may be subject to a surcharge of up to \$10 which shall be deposited into the trauma system special fund.”

SECTION 6. Section 291-12, Hawaii Revised Statutes, is amended to read as follows:

“**§291-12 Inattention to driving.** Whoever operates any vehicle without due care or in a manner as to cause a collision with, or injury or damage to, as the case may be, any person, vehicle or other property shall be fined not more than \$500 or imprisoned not more than thirty days, or both, and may be subject to a surcharge of up to \$100 which shall be deposited into the trauma system special fund.”

SECTION 7. Section 291C-12, Hawaii Revised Statutes, is amended to read as follows:

“**§291C-12 Accidents involving death or serious bodily injury.** (a) The driver of any vehicle involved in an accident resulting in serious bodily injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a class B felony.

(c) The license or permit to drive and any nonresident operating privilege of the person so convicted shall be revoked.

(d) For any violation under this section, a surcharge of \$500 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.

(e) For any violation under this section, a surcharge of up to \$500 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.”

SECTION 8. Section 291C-12.5, Hawaii Revised Statutes, is amended to read as follows:

“**§291C-12.5 Accidents involving substantial bodily injury.** (a) The driver of any vehicle involved in an accident resulting in substantial bodily injury to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a class C felony.

(c) For any violation under this section, a surcharge of \$250 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.

(d) For any violation under this section, a surcharge of up to \$250 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.”

SECTION 9. Section 291C-12.6, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-12.6 Accidents involving bodily injury.** (a) The driver of any vehicle involved in an accident resulting in bodily injury to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a misdemeanor.

(c) For any violation under this section, a surcharge of \$100 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.

(d) For any violation under this section, a surcharge of up to \$100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.”

SECTION 10. Section 291C-13, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-13 Accidents involving damage to vehicle or property.** The driver of any vehicle involved in an accident resulting only in damage to a vehicle or other property that is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or as close thereto as possible, but shall forthwith return to, and in every event shall remain at, the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary. For any violation under this section, a surcharge of up to \$100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.”

SECTION 11. Section 291C-14, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-14 Duty to give information and render aid.** (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle or other property which is driven or attended by any person shall give the driver’s name, address, and the registration number of the vehicle the driver is driving, and shall upon request and if available exhibit the driver’s license or permit to drive to any person injured in the accident or to the driver or occupant of or person attending any vehicle or other property damaged in the accident and shall give such information and upon request exhibit such license or permit to any police officer at the scene of the accident or who is investigating the accident and shall render to any person injured in the accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary, or if such carrying is requested by the injured person; provided that if the

vehicle involved in the accident is a bicycle, the driver of the bicycle need not exhibit a license or permit to drive.

(b) In the event that none of the persons specified is in condition to receive the information to which they otherwise would be entitled under subsection (a), and no police officer is present, the driver of any vehicle involved in the accident after fulfilling all other requirements of section 291C-12, 291C-12.5, or 291C-12.6, and subsection (a) of this section, insofar as possible on the driver's part to be performed, shall forthwith report the accident to the nearest police officer and submit thereto the information specified in subsection (a).

(c) For any violation under this section, a surcharge of up to \$100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund."

SECTION 12. Section 291C-15, Hawaii Revised Statutes, is amended to read as follows:

**"[§291C-15] Duty upon striking unattended vehicle or other property.** The driver of any vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended resulting in any damage to the other vehicle or property shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle or other property of the driver's name, address, and the registration number of the vehicle the driver is driving or shall attach securely in a conspicuous place in or on such vehicle or other property a written notice giving the driver's name, address, and the registration number of the vehicle the driver is driving and shall without unnecessary delay notify the nearest police office. Every such stop shall be made without obstructing traffic more than is necessary. For any violation under this section, a surcharge of up to \$100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund."

SECTION 13. Section 291C-16, Hawaii Revised Statutes, is amended to read as follows:

**"§291C-16 Immediate notice of accident.** (a) The driver of a vehicle involved in an accident resulting in injury or death of any person or total damage to all property to an apparent extent of \$3,000 or more shall immediately by the quickest means of communication give notice of the accident to the nearest police office. If sent to the site of the accident, a responding police officer shall file a written report if it appears at the time that the accident has resulted in the injury or death of any person, or total damage to all property to an apparent extent of \$3,000 or more.

(b) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in subsection (a) and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.

(c) For any violation under this section, a surcharge of up to \$100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund."

SECTION 14. Section 291C-103, Hawaii Revised Statutes, is amended to read as follows:

**"§291C-103 Racing on highways.** (a) Except as provided in section 291C-149, no person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed

or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any race, competition, contest, test, or exhibition prohibited by this section.

(b) "Drag race" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit.

(c) "Racing" means the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

(d) "Exhibition of speed or acceleration" means the sudden acceleration of a vehicle resulting in the screeching of the vehicle's tires which is done to intentionally draw the attention of persons present toward the vehicle.

(e) Any person who violates this section, except subsection (d), shall be fined not more than \$500 or imprisoned not more than six months, or both. Any person who violates subsection (d) shall be fined not more than \$500 or be sentenced to perform community service, or both.

(f) Any person who violates this section while operating a vehicle at a speed exceeding the posted speed limit by thirty miles per hour or more shall be subject to a fine of not more than \$2,000, a term of imprisonment of not more than one year, or both; provided that the following additional penalties shall also apply:

- (1) For an offense that occurs within five years of a prior conviction, a one-year license suspension;
- (2) For an offense that occurs within five years of two prior convictions:
  - (A) A three-year license suspension; and
  - (B) A vehicle owned by the defendant and used in the commission of the offense which has been used in at least two prior offenses that resulted in convictions may be ordered by the court to be subject to forfeiture under chapter 712A.
- (3) For all offenses under this section, a surcharge of up to \$100 may be deposited in the trauma system special fund if the court so orders."

SECTION 15. Section 291C-104, Hawaii Revised Statutes, is amended to read as follows:

**"§291C-104 Speeding in a school zone or construction area.** (a) No person shall drive a motor vehicle at a speed greater than the maximum speed limit established pursuant to subsection (b) within a school zone or a construction area; provided that if the person drives a motor vehicle at a speed greater than thirty miles an hour or more over the maximum speed limit established in subsection (b), or over eighty miles per hour or more in a school zone or a construction zone, the provisions of section 291C-105 shall control. Appropriate law enforcement personnel may enforce the maximum speed limits established for school zones and construction areas.

(b) Section 291C-102 notwithstanding, the director of transportation and the counties, in their respective jurisdictions, shall establish maximum speed limits for school zones and construction areas and shall require the owner, general contractor, or other person responsible for construction to provide proper signs in construction areas. The director of transportation shall place official signs in school zones.

Signs posted pursuant to this subsection shall be plainly visible at all times under ordinary traffic conditions.

(c) Any person who violates this section shall be fined \$250 and may be charged with a surcharge of up to \$100 to be deposited into the trauma system special fund.<sup>3</sup>

(d) For purposes of this section:

“Construction area” includes any area in which there is occurring the installation, construction, or demolition of connections for streets, roads, driveways, concrete curbs and sidewalks, structures, drainage systems, landscaping, or grading within the highway rights-of-way, including aboveground and underground utility work, excavation and backfilling of trenches or other openings in state highways, the restoration, replacement, or repair of the base course, pavement surfaces, highway structures, or any other highway improvements.

“School zone” means every street and all public property in the vicinity of a school as designated by the department of transportation and the counties, in their respective jurisdictions.

(e) The director shall adopt rules pursuant to chapter 91 as may be necessary to implement this section.”

SECTION 16. Section 291C-105, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-105 Excessive speeding.** (a) No person shall drive a motor vehicle at a speed exceeding:

- (1) The applicable state or county speed limit by thirty miles per hour or more; or
- (2) Eighty miles per hour or more irrespective of the applicable state or county speed limit.

(b) For the purposes of this section, “the applicable state or county speed limit” means:

- (1) The maximum speed limit established by county ordinance;
- (2) The maximum speed limit established by official signs placed by the director of transportation on highways under the director’s jurisdiction; or
- (3) The maximum speed limit established pursuant to section 291C-104 by the director of transportation or the counties for school zones and construction areas in their respective jurisdictions.

(c) Any person who violates this section shall be guilty of a petty misdemeanor and shall be sentenced as follows without the possibility of probation or suspension of sentence:

- (1) For a first offense not preceded by a prior conviction for an offense under this section in the preceding five years:
  - (A) A fine of not less than \$500 and not more than \$1,000;
  - (B) Thirty-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the thirty-day prompt suspension of license, a minimum fifteen-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the thirty-day period, a restriction on the license that allows the person to drive for limited work-related purposes;
  - (C) Attendance in a course of instruction in driver retraining;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) May be charged a surcharge of up to \$100 to be deposited into the trauma system special fund if the court so orders;

- (E)<sup>2</sup> (F) An assessment for driver education pursuant to section 286G-3; and
- (F)<sup>2</sup> (G) Either one of the following:
- (i) Thirty-six hours of community service work; or
  - (ii) Not less than forty-eight hours and not more than five days of imprisonment;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section, by:
- (A) A fine of not less than \$750 and not more than \$1,000;
  - (B) Prompt suspension of license and privilege to operate a vehicle for a period of thirty days with an absolute prohibition from operating a vehicle during the suspension period;
  - (C) Attendance in a course of instruction in driver retraining;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) May be charged a surcharge of up to \$100 to be deposited into the trauma system special fund if the court so orders;
- (E)<sup>2</sup> (F) An assessment for driver education pursuant to section 286G-3; and
- (F)<sup>2</sup> (G) Either one of the following:
- (i) Not less than one hundred twenty hours of community service work; or
  - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; and
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section, by:
- (A) A fine of \$1,000;
  - (B) Revocation of license and privilege to operate a vehicle for a period of not less than ninety days but not more than one year;
  - (C) Attendance in a course of instruction in driver retraining;
  - (D) No fewer than ten days but no more than thirty days of imprisonment of which at least forty-eight hours shall be served consecutively;
  - (E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (F) May be charged a surcharge of up to \$100 to be deposited into the trauma system special fund if the court so orders; and
- (F)<sup>2</sup> (G) An assessment for driver education pursuant to section 286G-3.”

SECTION 17. Section 291E-61, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-61 Operating a vehicle under the influence of an intoxicant.** (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person’s normal mental faculties or ability to care for the person and guard against casualty;
- (2) While under the influence of any drug that impairs the person’s ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or

- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.
- (b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:
  - (1) Except as provided in [paragraph]<sup>2</sup> (2), for the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):
    - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
    - (B) Ninety-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs;
    - (C) Any one or more of the following:
      - (i) Seventy-two hours of community service work;
      - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
      - (iii) A fine of not less than \$150 but not more than \$1,000; and
    - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
    - (E) May be charged a surcharge of up to \$25 to be deposited into the trauma system special fund if the court so orders;
  - (2) For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly intoxicated driver not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):
    - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
    - (B) Prompt suspension of a license and privilege to operate a vehicle for a period of six months with an absolute prohibition from operating a vehicle during the suspension period;
    - (C) Any one or more of the following:
      - (i) Seventy-two hours of community service work;
      - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
      - (iii) A fine of not less than \$150 but not more than \$1,000; and
    - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
    - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;
  - (3) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a) by:
    - (A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;
    - (B) Either one of the following:

- (i) Not less than two hundred forty hours of community service work; or
  - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;
  - (C) A fine of not less than \$500 but not more than \$1,500; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;
- (4) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
- (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
  - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; ~~and~~<sup>2</sup>
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders; and
  - ~~(E)~~<sup>2</sup> (F) Forfeiture under chapter 712A of the vehicle owned and operated by the person committing the offense; provided that the department of transportation shall provide storage for vehicles forfeited under this subsection; and
- (5) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1), (3), or (4).
- (c) Notwithstanding any other law to the contrary, any:
- (1) Conviction under this section, section 291E-4(a), or section 291E-61.5;
  - (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or
  - (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a), or section 291E-61.5;

shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo contendere, or an adjudication in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section. No license and privilege suspension or revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently



reversed, the person's license and privilege to operate a vehicle shall be suspended or revoked as provided in this section.

(d) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(e) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until the expiration of the period of revocation determined by the court. After the period of revocation is completed, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(f) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test.

(g) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

(h) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2."

SECTION 18. Section 291E-61.5, Hawaii Revised Statutes, is amended to read as follows:

**"§291E-61.5 Habitually operating a vehicle under the influence of an intoxicant.** (a) A person commits the offense of habitually operating a vehicle under the influence of an intoxicant if:

- (1) The person is a habitual operator of a vehicle while under the influence of an intoxicant; and
- (2) The person operates or assumes actual physical control of a vehicle:
  - (A) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;
  - (B) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
  - (C) With .08 or more grams of alcohol per two hundred ten liters of breath; or
  - (D) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) For the purposes of this section:

"Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had three or more times within ten years of the instant offense:

- (1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

- (2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; or
- (3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

A person has the status of a "habitual operator of a vehicle while under the influence of an intoxicant" if the person has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant.

(c) Habitually operating a vehicle while under the influence of an intoxicant is a class C felony.

(d) For a conviction under this section, the sentence shall be either:

- (1) An indeterminate term of imprisonment of five years; or
- (2) A term of probation of five years, with conditions to include:
  - (A) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
  - (B) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively;
  - (C) Referral to a certified substance abuse counselor as provided in section 291E-61(d); and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;<sup>1</sup> and
  - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders.

In addition to the foregoing, any vehicle owned and operated by the person committing the offense shall be subject to forfeiture pursuant to chapter 712A, provided that the department of transportation shall provide storage for vehicles forfeited under this subsection.

(e) Whenever a court sentences a person under this section, it shall also require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(f) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until expiration of the period of revocation determined by the court. After the period of revocation is complete, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(g) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a

series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test.

(h) As used in this section, the term “examiner of drivers” has the same meaning as provided in section 286-2.”

SECTION 19. Section 291C-161, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Every person convicted under or found in violation of section 291C-12, 291C-12.5, 291C-12.6, 291C-13, 291C-14, 291C-15, 291C-16,<sup>4</sup> 291C-72, 291C-73, 291C-95, 291C-102, 291C-103, 291C-104, or 291C-105 shall be sentenced or fined in accordance with those sections.”

SECTION 20. Section 321-22.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§321-22.5]]~~ **Trauma system special fund.** (a) There is established within the state treasury a special fund to be known as the trauma system special fund to be administered and expended by the department of health. The fund shall consist of:

- (1) Surcharges collected pursuant to sections 291- , 291C- , and 291E- ;
- (2) Cigarette tax revenues designated under section 245-15;
- (3) Federal funds granted by Congress or executive order for the purpose of this chapter; provided that the acceptance and use of federal funds shall not commit state funds for services and shall not place an obligation upon the legislature to continue the purpose for which the federal funds are made available;
- (4) Funds appropriated by the legislature for this purpose, including grants-in-aid;
- (5) Grants, donations, and contributions from private or public sources for the purposes of the trauma system special fund; and
- (6) Interest on and other income from the fund, which shall be separately accounted for.

Moneys in the trauma system special fund shall not lapse at the end of the fiscal year. Expenditures from the trauma system special fund shall be exempt from chapters 103D and 103F.

(b) The moneys in the trauma system special fund shall be used by the department to support the continuing development and operation of a comprehensive state trauma system. The trauma system special fund shall be used to subsidize the documented costs for the comprehensive state trauma system, including but not limited to the following:

- (1) Costs of under-compensated and uncompensated trauma care incurred by hospitals providing care to trauma patients; and
- (2) Costs incurred by hospitals providing care to trauma patients to maintain on-call physicians for trauma care.

The money in the trauma system special fund shall not be used to supplant funding for trauma services authorized prior to July 1, 2006, and shall not be used for ambulance or medical air transport services.

~~(c) [Interest and investment earnings attributable to the moneys in the trauma system special fund, federal funding, legislative appropriations, and grants, donations, and contributions from private or public sources for the purposes of the trauma system special fund shall be deposited into the trauma system special fund.~~

~~(d)] Disbursements from the fund shall be made in accordance with a methodology established by the department of health to calculate costs incurred by a~~

hospital providing care to trauma patients that are eligible to receive reimbursement under subsection (d). The methodology shall take into account:

- (1) Physician on-call coverage that is demonstrated to be essential for trauma services within the hospital;
- (2) Equipment that is demonstrated to be essential for trauma services within the hospital;
- (3) The creation of overflow or surge capacity to allow a trauma center to respond to mass casualties resulting from an act of terrorism or natural disaster; and
- (4) All other hospital services and resources that are demonstrated to be essential for trauma services within the hospital.

The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section~~including the methodology for disbursements from the trauma system special fund~~.

~~(e)~~ (d) To receive reimbursement, a hospital providing care to trauma patients shall apply to the trauma system special fund on a form and in a manner approved by the department; provided that recipients of reimbursements from the trauma system special fund shall be subject to the following conditions:

- (1) The recipient of a reimbursement shall:
  - (A) Comply with applicable federal, state, and county laws;
  - (B) Comply with any other requirements the director may prescribe;
  - (C) Allow the director, the legislative bodies, and the state auditor access to records, reports, files, and other related documents, to the extent permissible under applicable state and federal law, so that the program, management, and fiscal practices of the recipient may be monitored and evaluated to ensure the proper and effective expenditure of public funds;
  - (D) Provide care to all injured patients regardless of their ability to pay; and
  - (E) Participate in data collection and peer review activities for the purpose of system evaluation and improvement of patient care; and
- (2) Every reimbursement shall be monitored according to rules established by the director under chapter 91 to ensure compliance with this section.

~~(f)~~ (e) Necessary administrative expenses to carry out this section shall not exceed five per cent of the total amount collected in any given year.

~~(g)~~ (f) The department shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session that outlines the receipts of and expenditures from the trauma system special fund.

~~(h)~~ (g) For the purposes of this section:

“Comprehensive state trauma system” means a coordinated integrated system providing a spectrum of medical care throughout the State designed to reduce death and disability by appropriate and timely diagnosis and specialized treatment of injuries, which includes hospitals with successive levels of advanced capabilities for trauma care in accordance with nationally accepted standards established by the American College of Surgeons Committee on Trauma.

“Hospital providing care to trauma patients” means a hospital with emergency services that receives and treats injured patients.

“Trauma care” means specialized medical care intended to reduce death and disability from injuries.

“Trauma center” means a facility verified by the American College of Surgeons or designated by the department applying American College of Surgeons recommendations as guidelines as being a level I, level II, level III, or level IV trauma

center. Level I represents the highest level attainable by a verified trauma center, and level IV represents the lowest level attainable by a verified trauma center.”

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>5</sup>

SECTION 22. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Notes**

1. Semicolon should be underscored.
2. So in original.
3. Period should not be underscored.
4. Comma should be underscored.
5. Edited pursuant to HRS §23G-16.5.

**ACT 232**

H.B. NO. 357

A Bill for an Act Relating to Traffic Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The 2004 Elderly Pedestrian Integration Report prepared by SMS Research & Marketing Services, Inc. for the department of transportation indicated that there are approximately five hundred sixty pedestrian injuries in Hawaii each year, and that an average of twenty-eight pedestrians die each year after being struck by a car. Elderly pedestrians, age sixty-five and older, constituted the highest number of pedestrian fatalities when compared to all other age groups in Hawaii.

The length of a flashing indication (hand symbol) is calculated based on the length of the crosswalk and the nationally recognized average walking speed of pedestrians.

However, elderly pedestrians need more time to cross major intersections due to diminishing physical abilities. Considering that an elderly pedestrian generally crosses the street at a slower walking speed, limited timeframes to cross the street safely put elderly pedestrians at risk.

Recently, AARP Hawaii staff, volunteers, and community partners gathered at intersections across Hawaii to conduct “walkability” assessments along many of Hawaii’s busiest streets and identified many intersections where the timeframes to cross the street safely were too short. Hawaii’s elderly pedestrians should not have to rush to cross the street. The length of a flashing indication should be sufficient for elderly pedestrians to cross the street safely.

While the elderly, children, and disabled persons are the most vulnerable, ordinary citizen pedestrians are also at risk. In 2007, a number of pedestrians were killed, and it was one of the most dangerous for pedestrians ever in Hawaii. Immediate action is needed even as a longer term study is conducted.

The purpose of this Act is to appropriate funds to the department of transportation so that it can:

- (1) Work with nonprofits and the counties to take immediate action to make crosswalks and roadways safer;
- (2) Conduct a study to identify more intersections where the time to cross the intersection is insufficient for elderly pedestrians; and
- (3) Develop additional plans to make crosswalks and roadways safer.

Making Hawaii's roadways safer for pedestrians is consistent with Kamehameha's famous law, Ke Kanawai Mamalahoe, the law of the splintered paddle, which assures that every man, woman, and child is able to travel freely and in peace. This law is established as state law in article IX, section 10, of the Hawaii state constitution:

"Let every elderly person, woman and child lie by the roadside in safety — shall be a unique and living symbol of the State's concern for public safety."

SECTION 2. (a) The department of transportation shall work with the counties and nonprofit organizations to identify and implement immediate improvements to high-risk crosswalks and road crossings. Examples of such immediate improvements, which do not require extensive studies, include:

- (1) Recalibrating traffic signals to lengthen crossing times;
- (2) Accelerating the schedule to replace non-timer crossing signals with traffic countdown timers;
- (3) Strategically reprioritizing installation of traffic countdown timers based on how dangerous the intersection ranks based on data, including the recent AARP Hawaii study;
- (4) Developing a statewide public awareness campaign;
- (5) Pilot projects such as pedestrian-activated flashing signals, portable hand-carried signs and flags;
- (6) Advanced crosswalk markers; and
- (7) Enforcement of crosswalk laws for cars and pedestrians.

(b) The department of transportation shall conduct a study to identify state and county intersections where the time to cross the intersection is insufficient for elderly pedestrians, and to develop additional design, funding, and installation plans to make crosswalks and road crossings safer for pedestrians.

(c) The department of transportation shall focus its study on:

- (1) The principle of the law of the splintered paddle, Ke Kanawai Mamalahoe, that roadways need to be safely shared among all road users;
- (2) The need to consider the capabilities and needs of the elderly, children, and disabled persons to use appropriate roads as pedestrians;
- (3) Impacts on current traffic volumes when pedestrian walk times are lengthened and potential countermeasures for the effects on traffic; and
- (4) Streets, intersections, and communities having insufficient timeframes for elderly persons to cross the street safely.

(d) The department of transportation may:

- (1) Contract out the study to a private contractor; and
- (2) Involve the various county transportation departments as appropriate.

(e) The department of transportation shall submit an interim report to the legislature not later than twenty days prior to the convening of the 2009 regular session and a final report, including accomplishments, findings, future plans, cost estimates, and any proposed legislation, to the legislature no later than twenty days prior to the convening of the 2010 regular session.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 for the department of transportation to conduct a pilot study to identify state and county intersections where the time to cross the intersection is insufficient for elderly pedestrians and to implement any immediate improvements to high-risk crosswalks and road crossings; provided that the department may consult with the counties and nonprofit organizations as appropriate for purposes of the pilot study.

The sums appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

ACT 233

S.B. NO. 2646

A Bill for an Act Relating to Important Agricultural Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I

SECTION 1. In 1978, voters approved article XI, section 3, of the Constitution of the State of Hawaii, which sets out the framework for state policies to promote agriculture and the conservation of productive agricultural lands in the State. Article XI, section 3, reads as follows:

“The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.”

To address the issue of important agricultural lands, Act 183, Session Laws of Hawaii 2005, established standards, criteria, and mechanisms to identify important agricultural lands and to implement the intent and purpose of article XI, section 3, of the Hawaii Constitution.

Act 183 also recognized that while the supply of lands suitable for agriculture is critical, the long-term viability of agriculture also depends on other factors, including:

- (1) Commodity prices;
- (2) Availability of water for irrigation;
- (3) Agricultural research and outreach;
- (4) Application of production technologies;
- (5) Marketing; and
- (6) Availability and cost of transportation services.

The purpose of this Act is to establish a variety of incentives that meet the requirements of Act 183 by:

- (1) Providing incentives and protections to establish and sustain viable agricultural operations on important agricultural lands; and
- (2) Providing for the designation of important agricultural lands on public lands by:
  - (A) Requiring the department of agriculture and department of land and natural resources to jointly identify the state-owned lands that should be designated as “important agricultural lands”;
  - (B) Transferring management authority over those lands to the department of agriculture; and

- (3) Providing for the combined designation of important agricultural land and reclassification to other land use districts by declaratory order of the land use commission.

## PART II

SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**“§205- Important agricultural land; farm dwellings and employee housing.** A landowner whose agricultural lands are designated as important agricultural lands may develop, construct, and maintain farm dwellings and employee housing for farmers, employees, and their immediate family members on these lands; provided that:

- (1) The farm dwellings and employee housing units shall be used exclusively by farmers and their immediate family members who actively and currently farm on important agricultural land upon which the dwelling is situated; provided further that the immediate family members of a farmer may live in separate dwelling units situated on the same designated land;
- (2) Employee housing units shall be used exclusively by employees and their immediate family members who actively and currently work on important agricultural land upon which the housing unit is situated; provided further that the immediate family members of the employee shall not live in separate housing units and shall live with the employee;
- (3) The total land area upon which the farm dwellings and employee housing units and all appurtenances are situated shall not occupy more than five per cent of the total important agricultural land area controlled by the farmer or the employee’s employer or fifty acres, whichever is less;
- (4) The farm dwellings and employee housing units shall meet all applicable building code requirements;
- (5) Notwithstanding section 205-4.5(a)(12), the landowner shall not plan or develop a residential subdivision on the important agricultural land;
- (6) Consideration may be given to the cluster development of farm dwellings and employee housing units to maximize the land area available for agricultural production; and
- (7) The plans for farm dwellings and employee housing units shall be supported by agricultural plans that are approved by the department of agriculture.”

## PART III

SECTION 3. Tax incentives are a critical component of the long-term viability of agriculture on important agricultural lands in the State. The legislature finds that it is in the public’s interest to assist agricultural businesses in establishing and sustaining viable agricultural operations on important agricultural lands by providing incentives such as income tax credits.

The purpose of this part is to establish an important agricultural land qualified agricultural cost tax credit to establish and sustain viable agricultural operations on important agricultural lands.

SECTION 4. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:



**“§235- Important agricultural land qualified agricultural cost tax credit.**

(a) There shall be allowed to each taxpayer an important agricultural land qualified agricultural cost tax credit that may be claimed in taxable years beginning after the taxable year during which the tax credit under section 235-110.46 is repealed, exhausted, or expired. The credit shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The tax credit amount shall be determined as follows:

- (1) In the first year in which the credit is claimed, twenty-five per cent of the lesser of the following:
  - (A) The qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
  - (B) \$625,000;
- (2) In the second year in which the credit is claimed, fifteen per cent of the lesser of the following:
  - (A) The qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
  - (B) \$250,000; and
- (3) In the third year in which the credit is claimed, ten per cent of the lesser of the following:
  - (A) The qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
  - (B) \$125,000.

The taxpayer may incur qualified agricultural costs during a taxable year in anticipation of claiming the credit in future taxable years during which the credit is available. The taxpayer may claim the credit in any taxable year after the taxable year during which the taxpayer incurred the qualified agricultural costs upon which the credit is claimed. The taxpayer also may claim the credit in consecutive or inconsecutive taxable years until exhausted.

(b) No other credit may be claimed under this chapter for qualified agricultural costs for which a credit is claimed under this section for the taxable year.

(c) The amount of the qualified agricultural costs eligible to be claimed under this section shall be reduced by the amount of funds received by the taxpayer during the taxable year from the irrigation repair and maintenance special fund under section 167-24.

(d) The cost upon which the tax credit is computed shall be determined at the entity level. In the case of a partnership, S corporation, estate, trust, or other pass through entity, distribution and share of the credit shall be determined pursuant to section 235-110.7(a).

If a deduction is taken under Section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the qualified agricultural cost for which a deduction was taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. No deduction shall be allowed for that portion of otherwise deductible qualified agricultural costs on which a credit is claimed under this section.

(e) If the credit under this section exceeds the taxpayer’s net income tax liability for the taxable year, the excess of the credit over liability shall be refunded to the taxpayer; provided that no refunds or payments on account of the credits allowed by this section shall be made for amounts less than \$1.

All claims for a tax credit under this section, including amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit is claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

- (f) The director of taxation:
  - (1) Shall prepare any forms that may be necessary to claim a credit under this section;
  - (2) May require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section; and
  - (3) May adopt rules pursuant to chapter 91 to effectuate this section.
- (g) The department of agriculture shall:
  - (1) Maintain records of the total amount of qualified agricultural costs for each taxpayer claiming a credit;
  - (2) Verify the amount of the qualified agricultural costs claimed;
  - (3) Total all qualified agricultural costs claimed; and
  - (4) Certify the total amount of the tax credit for each taxable year.

Upon each determination, the department of agriculture shall issue a certificate to the taxpayer verifying the qualifying agricultural costs and the credit amount certified for each taxable year. For a taxable year, the department of agriculture may certify a credit for a taxpayer who could have claimed the credit in a previous taxable year, but chose not to because the maximum annual credit amount under subsection (h) was reached in that taxable year.

The taxpayer shall file the certificate with the taxpayer's tax return with the department of taxation. Notwithstanding the department of agriculture's certification authority under this section, the director of taxation may audit and adjust certification to conform to the facts.

Notwithstanding any other law to the contrary, the information required by this subsection shall be available for public inspection and dissemination under chapter 92F.

(h) If in any taxable year the annual amount of certified credits reaches \$7,500,000 in the aggregate, the department of agriculture shall immediately discontinue certifying credits and notify the department of taxation. In no instance shall the department of agriculture certify a total amount of credits exceeding \$7,500,000 per taxable year. To comply with this restriction, the department of agriculture shall certify credits on a first come, first served basis.

The department of taxation shall not allow the aggregate amount of credits claimed to exceed that amount per taxable year.

(i) The department of agriculture, in consultation with the department of taxation, shall annually determine the information necessary to provide a quantitative and qualitative assessment of the outcomes of the tax credit.

Every taxpayer, no later than the last day of the taxable year following the close of the taxpayer's taxable year in which the credit is claimed, shall submit a certified written statement to the department of agriculture. Failure to provide the information shall result in ineligibility and a recapture of any credit already claimed for that taxable year. The amount of the recaptured tax credit shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs.

Notwithstanding any law to the contrary, a statement submitted under this subsection shall be a public document.

(j) The department of agriculture, in consultation with the department of taxation, shall annually submit a report evaluating the effectiveness of the tax credit. The report shall include but not be limited to findings and recommendations to improve the effectiveness of the tax credit to further encourage the development of agricultural businesses.

(k) As used in this section:

"Agricultural business" means any person with a commercial agricultural, silvicultural, or aquacultural facility or operation, including:

- (1) The care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses;
- (2) The planting, cultivating, harvesting, and processing of crops; and
- (3) The farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment;

provided that the principal place of the agricultural business is maintained in the State and more than fifty per cent of the land the agricultural business owns or leases, excluding land classified as conservation land, is important agricultural land.

“Important agricultural lands” means lands identified and designated as important agricultural lands pursuant to part III of chapter 205.

“Net income tax liability” means income tax liability reduced by all other credits allowed under this chapter.

“Qualified agricultural costs” means expenditures for:

- (1) The plans, design, engineering, construction, renovation, repair, maintenance, and equipment for:
  - (A) Roads or utilities, primarily for agricultural purposes, where the majority of the lands serviced by the roads or utilities, excluding lands classified as conservation lands, are important agricultural lands;
  - (B) Agricultural processing facilities in the State, primarily for agricultural purposes, where the majority of the crops or livestock processed, harvested, treated, washed, handled, or packaged are from agricultural businesses;
  - (C) Water wells, reservoirs, dams, water storage facilities, water pipelines, ditches, or irrigation systems in the State, primarily for agricultural purposes, providing water for lands, the majority of which, excluding lands classified as conservation lands, are important agricultural lands; and
  - (D) Agricultural housing in the State, exclusively for agricultural purposes; provided that:
    - (i) The housing units are occupied solely by farmers or employees for agricultural businesses and their immediate family members;
    - (ii) The housing units are owned by the agricultural business;
    - (iii) The housing units are in the general vicinity, as determined by the department of agriculture, of agricultural lands owned or leased by the agricultural business; and
    - (iv) The housing units conform to any other conditions that may be required by the department of agriculture;
- (2) Feasibility studies, regulatory processing, and legal and accounting services related to the items under paragraph (1);
- (3) Equipment, primarily for agricultural purposes, used to cultivate, grow, harvest, or process agricultural products by an agricultural business; and
- (4) Regulatory processing, studies, and legal and other consultant services related to obtaining or retaining sufficient water for agricultural activities and retaining the right to farm on lands identified as important agricultural lands.

(1) The department of agriculture shall cease certifying credits pursuant to this section after the fourth taxable year following the taxable year during which the credits are first claimed; provided that a taxpayer with accumulated, but unclaimed, certified credits may continue claiming the credits in subsequent taxable years until exhausted.”

SECTION 5. The department of taxation, in consultation with the department of agriculture, shall submit to the legislature an annual report, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2010, regarding the quantitative and qualitative assessment of the impact of the important agricultural land qualified agricultural cost tax credit.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 2008-2009 for the department of agriculture to administer the important agricultural land qualified agricultural cost tax credit.

The sum appropriated shall be expended by the department of agriculture for the purposes of this part.

#### PART IV

SECTION 7. Financing is also a critical component of the long-term viability of agriculture on important agricultural lands in the State. The legislature finds that it is in the public interest to assist agricultural producers in meeting their financing needs for projects that are located on important agricultural lands.

The purpose of this part is to further implement Act 183, Session Laws of Hawaii 2005, by authorizing the chairperson of the board of agriculture to guarantee loans relating to agricultural projects located on important agricultural lands.

SECTION 8. Chapter 155, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§155- Loan guaranty; important agricultural lands; agricultural and aquacultural loans.** (a) From July 1, 2009, the chairperson of the board of agriculture may guarantee loans made by commercial lenders authorized to do business in this State, to agricultural producers for the purpose of developing and implementing agricultural projects; provided that the chairperson of the board of agriculture shall determine that:

- (1) The agricultural projects are located on lands designated as important agricultural lands pursuant to part III of chapter 205; and
- (2) The commercial lender has completed its due diligence in approving the loan, including ensuring adequate collateral;

The chairperson of the board of agriculture may impose other conditions that the chairperson deems reasonable to implement the loan guaranty.

(b) In addition to the conditions that the chairperson of the board of agriculture may impose under subsection (a), any loan guaranty made pursuant to this section shall meet the following conditions:

- (1) For any loan that finances operating costs, the maximum term of the loan shall be ten years;
- (2) For any loan that finances capital improvement costs, the maximum term of the loan shall be twenty years;
- (3) The interest rate charged on any loan shall be one per cent below the commercial lender's prime rate for as long as the loan guaranty is in effect;
- (4) The loan guaranty may be up to eighty-five per cent of the outstanding principal amount of any single loan, but shall not include any fees or accrued interest associated with the loan or its collection; and
- (5) The total principal amount of the guaranteed portion of all loans outstanding at any time shall not exceed \$2,500,000.

(c) The department of agriculture may adopt rules pursuant to chapter 91 to effectuate this section.

(d) As used in this section:

“Agricultural producer” means a farmer, cooperative association, or landowner who derives at least fifty per cent of its gross income from agricultural or aquacultural activities.

“Agricultural project” means a project relating to agricultural or aquacultural operations or capital improvements.”

SECTION 9. The department of taxation, in consultation with the department of agriculture, shall submit to the legislature an annual report, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2010, that provides a quantitative and qualitative assessment of the impact of the loan guaranty program established in section 155- , Hawaii Revised Statutes.

PART VI<sup>1</sup>

SECTION 10. Section 174C-31, Hawaii Revised Statutes, is amended by amending subsections (e) and (f) to read as follows:

“(e) The department of agriculture shall prepare a state agricultural water use and development plan for agricultural uses in the State in accordance with chapter 167 and this chapter, and subsequently modify and update the plan as necessary. The state agricultural water use and development plan shall include but not be limited to a master irrigation inventory plan ~~[which]~~ that shall:

- (1) Inventory ~~[the]~~ public and private irrigation water systems;
- (2) Identify the extent of rehabilitation needed for each system;
- (3) Identify sources of water used by agricultural operations and particularly those on lands identified and designated as important agricultural lands under part III of chapter 205;
- (4) Identify current and future water needs for agricultural operations and particularly those on lands identified and designated as important agricultural lands under part III of chapter 205;
- ~~[(3)]~~ (5) Subsidize the cost of repair and maintenance of the systems;
- ~~[(4)]~~ (6) Establish criteria to prioritize the rehabilitation of the systems;
- ~~[(5)]~~ (7) Develop a five-year program to repair the systems; and
- ~~[(6)]~~ (8) Set up a long-range plan to manage the systems.

The commission shall coordinate the incorporation of the state agricultural water use and development plan into the state water projects plan.

(f) Each county water use and development plan shall include but not be limited to:

- (1) Status of water and related land development, including an inventory of existing water uses for domestic, municipal, and industrial users, agriculture, particularly agriculture on lands designated as important agricultural lands under part III of chapter 205, aquaculture, hydropower development, drainage, reuse, reclamation, recharge, and resulting problems and constraints;
- (2) Future land uses and related water needs; and
- (3) Regional plans for water developments, including recommended and alternative plans, costs, adequacy of plans, and relationship to the water resource protection and water quality plans.”

PART VII<sup>1</sup>

SECTION 11. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**“§205- Agricultural processing facilities; permits; priority.** (a) Any agency subject to this chapter or title 13 that issues permits shall establish and implement a procedure for the priority processing of permit applications and renewals, at no additional cost to the applicant, for agricultural processing facilities that process crops or livestock from an agribusiness; provided that the majority of the lands held, owned, or used by the agribusiness shall be land designated as important agricultural lands pursuant to this part, excluding lands held, owned, or used by the agribusiness in a conservation district.

Any priority permit processing procedure established pursuant to this section shall not provide or imply that any permit application filed under the priority processing procedure shall be automatically approved.

(b) As used in this section, “agribusiness” means a business primarily engaged in the care and production of livestock, livestock products, poultry, poultry products, apiary, horticultural or floricultural products, the planting, cultivating, and harvesting of crops or trees, or the farming or ranching of any plant or animal species in a controlled salt, brackish, or fresh water environment.”

SECTION 12. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§321- Agricultural processing facilities; permits; priority.** (a) Any agency subject to this chapter or title 19 that issues permits shall establish and implement a procedure for the priority processing of permit applications and renewals, at no additional cost to the applicant, for agricultural processing facilities that process crops or livestock from an agribusiness; provided that the majority of the lands held, owned, or used by the agribusiness shall be land designated as important agricultural lands pursuant to part III of chapter 205, excluding lands held, owned, or used by the agribusiness in a conservation district.

Any priority permit processing procedure established pursuant to this section shall not provide or imply that any permit application filed under the priority processing procedure shall be automatically approved.

(b) As used in this section, “agribusiness” means a business primarily engaged in the care and production of livestock, livestock products, poultry, poultry products, apiary, horticultural or floricultural products, the planting, cultivating, and harvesting of crops or trees, or the farming or ranching of any plant or animal species in a controlled salt, brackish, or fresh water environment.”

PART VIII<sup>1</sup>

SECTION 13. The legislature declares that this Act establishes incentives for the designation of important agricultural lands in satisfaction of section 205-46, Hawaii Revised Statutes, and section 9 of Act 183, Session Laws of Hawaii 2005.

PART IX<sup>1</sup>

SECTION 14. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

“§205- Important agricultural lands; public lands. (a) Notwithstanding any law to the contrary, before December 31, 2009, the department of agriculture and the department of land and natural resources shall collaborate to identify public lands as defined under section 171-2 that should be designated important agricultural lands as defined in section 205-42 and shall cause to be prepared maps delineating those lands. In making the designations, the departments shall use the standards and criteria of section 205-44.

(b) The designation of important agricultural lands pursuant to this section shall not be subject to the district boundary amendment procedures of section 205-3.1 or 205-4 or declaratory order procedures of section 205-45.

(c) Notwithstanding any law to the contrary, beginning January 1, 2010, after receipt of the maps of public lands identified as important agricultural lands pursuant to subsection (a), the commission shall designate the public lands as important agricultural lands and adopt the maps of those public lands. Upon designation, the public lands shall be subject to this chapter.”

SECTION 15. Section 141-1, Hawaii Revised Statutes, is amended to read as follows:

“§141-1 Duties in general. The department of agriculture shall:

- (1) Gather, compile, and tabulate, from time to time, information and statistics concerning:
  - (A) Entomology and plant pathology: Insects, scales, blights, and diseases injurious[;] or liable to become injurious[;] to trees, plants, or other vegetation, and the ways and means of exterminating pests and diseases already in the State and preventing the introduction of [~~those~~] pests and diseases not yet here; and
  - (B) General agriculture: Fruits, fibres, and useful or ornamental plants and their introduction, development, care, and manufacture or exportation, with a view to introducing, establishing, and fostering new and valuable plants and industries;
- (2) Encourage and cooperate with the agricultural extension service and agricultural experiment station of the University of Hawaii and all private persons and organizations doing work of an experimental or educational character coming within the scope of the subject matter of chapters 141, 142, and 144 to 150A, and avoid, as far as practicable, duplicating the work of those persons and organizations;
- (3) Enter into contracts, cooperative agreements, or other transactions with any person, agency, or organization, public or private, as may be necessary in the conduct of the department’s business and on such terms as the department may deem appropriate; provided that the department shall not obligate any funds of the State, except the funds that have been appropriated to the department. Pursuant to cooperative agreement with any authorized federal agency, employees of the cooperative agency may be designated to carry out, on behalf of the State the same as department personnel, specific duties and responsibilities under chapters 141, 142, 150A, and rules adopted pursuant to those chapters, for the effective prosecution of pest control[;] and animal disease control[;] and the regulation of import into the State and intrastate movement of regulated articles;
- (4) Secure copies of the laws of other states, territories, and countries, and other publications germane to the subject matters of chapters 141, 142, and 144 to 150A, and make laws and publications available for public information and consultation;

- (5) Provide buildings, grounds, apparatus, and appurtenances necessary for the examination, quarantine, inspection, and fumigation provided for by chapters 141, 142, and 144 to 150A; for the obtaining, propagation, study, and distribution of beneficial insects, growths, and antidotes for the eradication of insects, blights, scales, or diseases injurious to vegetation of value and for the destruction of injurious vegetation; and for carrying out any other purposes of chapters 141, 142, and 144 to 150A;
- (6) Formulate and recommend to the governor and legislature additional legislation necessary or desirable for carrying out the purposes of chapters 141, 142, and 144 to 150A;
- (7) Publish at the end of each year a report of the expenditures and proceedings of the department and of the results achieved by the department, together with other matters germane to chapters 141, 142, and 144 to 150A[;] and [which] that the department may deem proper;
- (8) Administer a program of agricultural planning and development, including the formulation and implementation of general and special plans, including but not limited to the functional plan for agriculture; administer the planning, development, and management of the agricultural park program; plan, construct, operate, and maintain the state irrigation water systems; review, interpret, and make recommendations with respect to public policies and actions relating to agricultural land and water use; assist in research, evaluation, development, enhancement, and expansion of local agricultural industries; and serve as liaison with other public agencies and private organizations for the above purposes. In the foregoing, the department [~~of agriculture~~] shall act to conserve and protect agricultural lands and irrigation water systems, promote diversified agriculture, increase agricultural self-sufficiency, and ensure the availability of agriculturally suitable lands[-]; and
- (9) Manage, administer, and exercise control over any public lands, as defined under section 171-2, that are designated important agricultural lands pursuant to section 205- , including but not limited to establishing priorities for the leasing of these public lands within the department's jurisdiction."

SECTION 16. Section 171-3, Hawaii Revised Statutes, is amended to read as follows:

**“§171-3 Department of land and natural resources.** (a) The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources. The department shall manage, administer, and exercise control over public lands, the water resources, ocean waters, navigable streams, coastal areas (excluding commercial harbor areas), and minerals and all other interests therein and exercise such powers of disposition thereof as may be authorized by law. The department shall also manage and administer the state parks, historical sites, forests, forest reserves, aquatic life, aquatic life sanctuaries, public fishing areas, boating, ocean recreation, coastal programs, wildlife, wildlife sanctuaries, game management areas, public hunting areas, natural area reserves, and other functions assigned by law.

(b) Notwithstanding subsection (a), beginning January 1, 2010, the authority to manage, administer, and exercise control over any public lands that are designated important agricultural lands pursuant to section 205- , shall be transferred to the department of agriculture."



SECTION 17. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of land and natural resources relating to the functions transferred to the department of agriculture shall be transferred by this Act with the functions to which they relate.

PART X<sup>1</sup>

SECTION 18. Section 205-44, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§205-44[H] Standards and criteria for the identification of important agricultural lands.** (a) The standards and criteria in this section shall be used to identify important agricultural lands. Lands identified as important agricultural lands need not meet every standard and criteria listed ~~[below.]~~ in subsection (c). Rather, lands meeting any of the criteria ~~[below]~~ in subsection (c) shall be given initial consideration; provided that the designation of important agricultural lands shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the ~~[state constitution]~~ Hawaii Constitution and the objectives and policies for important agricultural lands in sections 205-42 and 205-43.

(b) In a petition for a declaratory order submitted under section 205-45 that seeks to both designate lands as important agricultural lands and reclassify lands in the agricultural district to the rural, conservation, or urban district, the lands shall be deemed qualified for designation as important agricultural land if the commission reasonably finds that the lands meet at least the criteria of subsection (c)(5) and (7) of this section.

If a petition seeks to only designate land as important agricultural lands, then the commission shall evaluate the lands in accordance with subsection (a).

(c) The standards and criteria shall be as follows:

- (1) Land currently used for agricultural production;
- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
- (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;
- (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;
- (5) Land with sufficient quantities of water to support viable agricultural production;
- (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;
- (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
- (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.”

SECTION 19. Section 205-45, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§205-45[H] Petition by farmer or landowner.** (a) A farmer or landowner with lands qualifying under section 205-44 may file with the commission a petition

for declaratory ~~[ruling with the commission]~~ order to designate the lands as important agricultural lands. The petition may be filed at any time in the designation process.

(b) Any law to the contrary notwithstanding, within the same petition for declaratory order as described in subsection (a), the petitioner may seek a reclassification of land in the agricultural district to the rural, urban, or conservation district, or a combination thereof; provided that:

- (1) The land sought to be reclassified to the rural, urban, or conservation district is within the same county as the land sought to be designated as important agricultural lands;
- (2) If the reclassification of the land is proposed to the urban district, that reclassification to urban is consistent with the relevant county general and community, development, or community development plans; and
- (3) The total acreage of the land sought to be designated or reclassified in the petition complies with the following proportions:
  - (A) At least eighty-five per cent of the total acreage is sought to be designated as important agricultural land; and
  - (B) The remainder of the acreage is sought to be reclassified to the rural, urban, or conservation district.

~~[(b)]~~ (c) The petition for declaratory [ruling] order shall be submitted in accordance with subchapter 14 of the commission's rules and shall include:

- (1) Tax map [keys] key numbers of the land to be designated as important agricultural lands and, if applicable, the land to be reclassified from the agricultural district to the rural, urban, or conservation district, along with verification and authorization from the applicable landowners;
- (2) Proof of qualification for designation as important agricultural lands under section 205-44, respecting a regional perspective; [and]
- (3) The current or planned agricultural use of the area sought to be designated[-] as important agricultural lands; and
- (4) If applicable, the current or planned use of the area sought to be reclassified to the rural, urban, or conservation district.

(d) Prior to the commission considering a petition for a declaratory order to designate important agricultural land in combination with the reclassification of agricultural land to the rural, urban, or conservation district, the petitioner shall submit to the commission a certification issued by the department of agriculture as to the quality of the land for which designation as important agricultural land is being sought.

~~[(e)]~~ (e) The commission shall review the petition and the accompanying submissions to evaluate the qualifications of the land for designation as important agricultural lands in accordance with section 205-44.

If the petition also seeks the reclassification of land to the rural, urban, or conservation district, the commission shall review the petition and accompanying submissions to evaluate:

- (1) The suitability of the land for the reclassification in accordance with section 205-2;
- (2) If the reclassification of the land is proposed to the urban district, that reclassification to urban is consistent with the relevant county general and community, development, or community development plans; and
- (3) Compliance with the other provisions of subsection (b).

If the commission, after its review ~~[and evaluation]~~, finds that the ~~[lands qualify for]~~ designation ~~[as important agricultural lands under this part,]~~ and, if applicable, reclassification sought in the petition should be approved, the commission shall vote, by a two-thirds majority of the members of the commission, to issue a declaratory order designating the petitioner's identified lands as important agricultural lands[-] and, if applicable, reclassifying the petitioner's identified land from the

agricultural district to the rural, urban, or conservation district. The commission may include reasonable conditions in the declaratory order.

With respect to a petition that seeks to both designate important agricultural lands and reclassify agricultural lands to the rural, urban, or conservation district, if the commission finds that either the designation or reclassification as proposed by the petitioner should not be approved, the commission shall deny the petition in its entirety.

~~[(d) Designating important agricultural lands by the commission]~~ (f) The designation or reclassification of land pursuant to subsection (a) or (b) shall not be ~~[considered as an amendment to district boundaries under]~~ subject to the district boundary amendment procedures of sections 205-3.1 and 205-4 or become effective prior to legislative enactment of protection and incentive measures for important agricultural land and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

~~[(e)]~~ (g) Farmers or landowners with lands qualifying under section 205-44 may file petitions for a declaratory ~~[ruling]~~ order to designate lands as important agricultural lands following the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

(h) A petitioner granted a declaratory order that designates important agricultural land, whether or not combined with the reclassification of land to the rural, urban, or conservation district, shall earn credits if the amount of land reclassified to the rural, urban, or conservation district is less than fifteen per cent of the total acreage of land subject to the order. The "total acreage of land subject to the order" means the total acreage designated as important agricultural land and, if applicable, reclassified to the rural, urban, or conservation district by the declaratory order.

The credits shall equal the difference between the following, rounded to the nearer tenth of an acre:

- (1) The number that is fifteen per cent of the total acreage of land subject to the order; less
- (2) The amount of the petitioner's land that is reclassified from the agricultural district to the rural, urban, or conservation district by the declaratory order.

A petitioner with credits earned within a county may petition the commission for a declaratory order to reclassify any of the petitioner's other land in the same county from the agricultural district to the rural, urban, or conservation district until the credits are exhausted or expired. The "petitioner's other land in the same county" means land owned by the petitioner that is in the same county as the land designated or reclassified under the petition. The commission may issue the declaratory order if it finds that the land is suitable for reclassification in accordance with section 205-2 and that the reclassification is consistent with the relevant county general and community, development, or community development plans. The petitioner may petition for such reclassification until all of the petitioner's credits are exhausted. Any unexhausted credits shall expire and become unusable ten years after the granting of the declaratory order that designated the important agricultural land and, if applicable, reclassified land to the rural, urban, or conservation district.

A petitioner with unused and unexhausted credits shall not transfer the credits to another person.

(i) Notwithstanding any other law to the contrary, the land use commission may grant declaratory orders pursuant to this section before the commission receives from any county a map delineating recommended important agricultural lands.

(j) Land designated as important agricultural land pursuant to a declaratory order that both designates land as important agricultural land and reclassifies land in the agricultural district to the rural, urban, or conservation district, or a combination

thereof pursuant to this section shall be re-designated only with the prior authorization of the legislature. The authorization shall be expressed by the adoption of a concurrent resolution approved by a two-thirds vote of each house of the legislature voting separately. When making its decision, the legislature shall consider the standards and criteria in section 205-50.

(k) The commission may adopt rules pursuant to chapter 91 to effectuate this section."

SECTION 20. Section 205-50, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) A farmer or landowner with qualifying lands may also petition the land use commission to remove the "important agricultural lands" designation from lands if a sufficient supply of water is no longer available to allow profitable farming of the land due to government actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control. If the "important agricultural lands" were designated by a declaratory order in combination with the reclassification of land in the agricultural district to the rural, urban, or conservation district pursuant to section 205-45, the commission shall not remove the designation unless the legislature provides prior authorization by adoption of a concurrent resolution in accordance with section 205-45."

SECTION 21. Section 205-52, Hawaii Revised Statutes, is amended to read as follows:

**[§205-52] Periodic review and amendment of important agricultural lands maps.** The maps delineating important agricultural lands shall be reviewed in conjunction with the county general plan and community ~~and~~ development or community development plan revision process, or at least once every ten years following the adoption of the maps by the land use commission; provided that the maps shall not be reviewed more than once every five years. Any review and amendment of the maps of important agricultural lands shall be conducted in accordance with this part. In these periodic reviews or petitions by the farmers or landowners for declaratory rulings, the "important agricultural lands" designation shall be removed from those important agricultural lands where the commission has issued a declaratory order that a sufficient supply of water is no longer available to allow profitable farming of these lands due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control~~[-];~~ provided that, if the "important agricultural lands" were designated by a declaratory order in combination with the reclassification of land in the agricultural district to the rural, urban, or conservation district pursuant to section 205-45, the commission shall not remove the designation unless the legislature provides prior authorization by adoption of a concurrent resolution in accordance with section 205-45."

## PART XI<sup>1</sup>

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 23. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Agriculture.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. The purpose of this part is to promote fiscal accountability with regard to agricultural land lease agreements between the State and lessees by allowing the agribusiness development corporation to contract with financial institutions to provide lease management services.

SECTION 2. Section 163D-7, Hawaii Revised Statutes, is amended to read as follows:

**~~[[H]§163D-7[H]~~ Agricultural projects; agricultural development plans.**

(a) The corporation may develop and implement agricultural projects where large tracts of agricultural land have been or will be taken out of productive agriculture or where, through detailed analysis, opportunities exist to exploit potential local, national, and international markets.

(b) The corporation may initiate and coordinate the preparation of business and agricultural development plans for its projects. The plans shall include a proposal for the organization of the enterprise, a marketing information and strategy, the impact on existing agricultural operations throughout the State, and a recommendation for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any infrastructure or accessory facilities in connection with any project.

(c) The corporation may enter into cooperative agreements with coordinating entrepreneurs or public agencies when the powers, services, and capabilities of the persons or agencies are deemed necessary and appropriate for the development and implementation of the business and agricultural development plans.

(d) The corporation may purchase, accept, and maintain permanent conservation easements, or transfer these easements to a qualified land trust in accordance with the federal Natural Resources Conservation Service farm and ranch lands protection program.

(e) Notwithstanding any provision of this chapter to the contrary, when leasing corporation-controlled agricultural land, the corporation may contract with a financial institution chartered under chapter 412 or a federal financial institution, as defined under section 412:1-109, that transacts business in this State to provide lease management services. For the purposes of this subsection, "lease management services" includes the collection of lease rent and any other moneys owed to the corporation related to the lease of agricultural land under the corporation's control.

~~[(d)]~~ (f) The agricultural planning activities of the corporation shall be coordinated with the county planning departments and the county land use plans, policies, and ordinances.

~~[(e)]~~ (g) The corporation may amend the business and agricultural development plans as may be necessary.

~~[(f)]~~ (h) Any undertaking by the corporation pursuant to this chapter shall be with the express written consent of the landowner or landowners directly affected."

## PART II

SECTION 3. The purpose of this part is to ensure the long-term availability of lands suitable for agricultural activities by authorizing the agribusiness development corporation to lease lands acquired under this Act for up to fifty-five years.

SECTION 4. Section 163D-15.6, Hawaii Revised Statutes, is amended to read as follows:

**“[§]163D-15.6 Commitment and preservation of agricultural leases.[§]”**

(a) The agribusiness development corporation shall work toward obtaining commitments from landowners in the leeward and central districts of Oahu that their agricultural leases shall be for a duration of twenty or more years<sup>[7]</sup> and shall not be amended or revoked ~~[in order]~~ to allow for a nonagricultural use of ~~[such] the land[-];~~ provided that for lands in central Oahu acquired under Act<sup>1</sup>, Session Laws of Hawaii 2008, the agricultural leases shall be for no more than fifty-five years.

(b) To further ensure the preservation of agriculture in the leeward and central districts of Oahu, the agribusiness development corporation shall monitor the agricultural leases of lands ~~[utilizing]~~ using the water from the Waiahole water system. In the event of any proposed amendment or revocation of any ~~[such]~~ lease, the corporation shall do all things within its powers under ~~[§]this chapter[§]~~ to protect and defend the interests of the agricultural leaseholders to ensure the continuation of agricultural use for those lands.”

## PART III

SECTION 5. The purpose of this part is to comply with article XI, sections 3, 4, and 10 of the state constitution, relating to the protection of agricultural lands, public land banking, and the promotion of farm ownership and diversified agriculture, by establishing a process to ensure that certain agricultural lands on the island of Oahu and owned by the Galbraith Estate:

- (1) Remain available for agricultural use;
- (2) Are properly managed to ensure their continued economic viability while being used for agriculture; and
- (3) Are managed in a manner that is sensitive to and consistent with the needs of farmers in the Waialua area.

The legislature finds that this part is in accordance with article XI, sections 3, 4, and 10 of the state constitution, is in the public interest, and will preserve agricultural activities in the area and a lifestyle that benefits the community at large.

SECTION 6. Chapter 163D, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§163D-A Acquisitions of important agricultural lands authorized by the legislature.** (a) The legislature may authorize the corporation to acquire agricultural lands for the protection of agricultural lands, public land banking, or the promotion of farm ownership and diversified agriculture.

(b) The acquisition shall be authorized by a bill enacted into law and shall contain:

- (1) A statement of the value of the interest in land as a resource to the State;
- (2) A description of the specific parcel of land or agricultural easement proposed to be acquired;
- (3) The name of the owner of the property; and

(4) The estimated costs of acquiring the interest in the land.

(c) The landowner shall receive payment for the interest in the land in a lump sum, through an installment purchase agreement as determined pursuant to section 163D-B, or from revenues derived from the issuance of revenue bonds pursuant to section 163D-9.

**§163D-B Acquisitions; payment.** (a) If the landowner agrees to the sale of the interest in lands pursuant to section 163D-A, the landowner and the corporation shall agree on whether the landowner shall receive payment for the interest in a lump sum or through an installment purchase agreement pursuant to section 163D-C.

(b) The corporation may make payments from moneys appropriated by the legislature.

**§163D-C Installment purchase agreements; interest payment.** (a) The legislature may authorize the corporation to negotiate installment purchase agreements for the acquisition of specific parcels of land for the protection of agricultural lands, public land banking, or the promotion of farm ownership and diversified agriculture. The installment purchase agreements shall be structured pursuant to the requirements of the Internal Revenue Code of 1986, as amended, to defer recognition of capital gain until all of the purchase price is paid. The agreement shall include provisions for the periodic payment of a portion of the purchase price with the remainder of the purchase price paid at the end of the term of the agreement. The legislature shall authorize the purchase of United States Treasury zero coupon bonds for the installment purchase agreement with a maturity date equal to the term of the agreement.

(b) The interest rate paid on the installment purchase agreement shall be not less than the interest rate on the zero coupon bonds at the closing of the agreement or eight per cent, whichever is higher.

(c) The corporation shall make semi-annual interest payments on the outstanding balance of the installment purchase agreement purchase price.”

#### PART IV

SECTION 7. Section 163D-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The corporation, with the approval of the governor, may issue, from time to time, revenue bonds in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for the purpose of constructing, acquiring, remodeling, furnishing, and equipping any project facility, including the acquisition of the site thereof[-]; acquiring agricultural lands through purchase to sustain and preserve viable agricultural enterprises within a contiguous geographic area; or acquiring agricultural lands for the protection of agricultural lands, public land banking, or the promotion of farm ownership and diversified agriculture.”

#### PART V

SECTION 8. (a) Pursuant to section 163D-A, Hawaii Revised Statutes, the agribusiness development corporation is authorized to acquire certain agricultural lands located on the island of Oahu and owned by the Galbraith Estate (Land Court Application 262), tax map keys 6-5-002:10, 6-5-002:25, 6-5-002:26, 7-1-001:01, 7-1-001:02, 7-1-001:03, 7-1-001:05, 7-1-001:06, 7-1-001:07, 7-1-001:08, 7-1-001:12, 7-1-001:13, 7-1-001:17, 7-1-001:20, 7-1-001:21, 7-1-001:22, 7-1-001:23, 7-1-001:24, 7-1-001:25, 7-1-001:26, 7-1-001:27, 7-1-001:29, 7-1-001:32, and any other lands owned by the Galbraith Estate.

(b) The legislature finds that the lands identified in subsection (a) contain soil qualities and growing conditions that support agricultural production of food, fiber, or fuel and energy producing crops and have sufficient quantities of water to support viable agricultural production and to meet the requirements for the protection of agricultural lands, public land banking, or the promotion of farm ownership and diversified agriculture.

(c) The agribusiness development corporation shall work with a negotiating team to review and make recommendations regarding any potential transactions. The negotiating team shall consist of a representative appointed by each of the following persons or entities:

- (1) The president of the senate;
- (2) The speaker of the house of representatives;
- (3) The department of agriculture; and
- (4) Other relevant partners.

SECTION 9. If an agreement to acquire the property identified in section 8 of this Act is not reached within a reasonable time as determined by the department of land and natural resources, the department of land and natural resources shall exercise its power of eminent domain to acquire the property. For purposes of this Act, condemnation of the property shall not be subject to legislative disapproval; provided that the cost of acquiring the lands described in this Act does not exceed the amount of funds appropriated or authorized pursuant to section 10 of this Act and the Supplemental Appropriations Act of 2008.

SECTION 10. Any moneys made available by appropriation through the Supplemental Appropriations Act of 2008, whether through general funds, revenues derived from the issuance of general obligation bonds, or other sources shall be expended to the extent necessary by the agribusiness development corporation for the purpose of purchasing agricultural lands located on the island of Oahu and owned by the Galbraith Estate (Land Court Application 262).

SECTION 11. In codifying this Act, the revisor of statutes shall insert the appropriate number of this Act in section 4 and in codifying the new sections in section 6 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 13. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

#### Notes

1. Act 234.

2. Edited pursuant to HRS §23G-16.5.



A Bill for an Act Relating to Greenhouse Gas Emissions Reduction.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 234, Session Laws of Hawaii 2007 (Act 234) established state policy to reduce, by January 1, 2020, greenhouse gas emissions to levels at or below the estimates of greenhouse gas emissions for 1990.

To achieve this goal, Act 234 established the greenhouse gas emissions reduction task force (task force), to be administratively attached to the department of business, economic development, and tourism. The task force is required to prepare a comprehensive work plan and regulatory scheme for implementing feasible, cost-effective reductions in greenhouse gas emissions to achieve the reductions required by Act 234. The task force is required to meet no less than 13 objectives in preparing the plan, including consultations with various other public and private agencies, investigation and development of analytical tools and economic models, consideration of various technical items related to greenhouse gases, examination and use of market-based compliance mechanisms to achieve reductions, and development of rules and regulations relating to greenhouse gas emissions.

The demanding work required of the task force has created a need for two additional specialized personnel within the department of business, economic development, and tourism to provide professional and technical support for the task force, as well as to assist in the implementation of other provisions of Act 234. The additional personnel, a task force program manager and a project assistant/researcher, are essential in ensuring that the task force fulfills its responsibilities in a timely, effective manner.

The purpose of this Act is to appropriate funds for two additional personnel to assist the task force in implementing Act 234.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$140,000 or so much thereof as may be necessary for fiscal year 2008-2009 for two temporary full-time positions within the department of business, economic development, and tourism as follows:

- (1) One greenhouse gas emissions reduction task force program manager; and
- (2) One greenhouse gas emissions reduction task force project assistant/researcher;

to assist the greenhouse gas emissions reduction task force as well as in the implementation of other provisions of Act 234, Session Laws of Hawaii 2007.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

A Bill for an Act Relating to Biosecurity.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the unchecked spread of invasive species is one of the greatest threats to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people. Invasive pests can cause millions of dollars in crop losses, the extinction of native species, the destruction of native forests, the spread of disease, and the quarantine of exported agricultural crops.

Island ecosystems are particularly vulnerable to the destructive power of invasive pests. In Guam, the accidental introduction of the brown tree snake has resulted in widespread devastation. Without natural predators or competition for food, brown tree snake populations have grown exponentially, causing mass extinctions of endemic birds. Where there were once bird songs, the silent forests of Guam are now home to as many as 15,000 snakes per square mile. Just one new pest like the brown tree snake could forever change the character of the Hawaiian Islands.

Despite our ongoing efforts to detect and eradicate invasive species, our fragile island ecosystems are constantly at risk from insects, disease-bearing organisms, snakes, weeds, and other invasive pests. The coqui frog, *Salvinia molesta*, *Miconia calvescens*, ohia rust, nettle caterpillar, and little fire ant are all present in Hawaii, disrupting the delicate balance of our ecosystems, crowding out native species, and reducing the biodiversity of our islands. Other harmful species like the papaya mealybug, erythrina gall wasp, Asian citrus psyllid, and varroa mite have the potential to devastate our environment and agriculture if allowed to become widespread in Hawaii and remain unchecked by natural predators.

The department of agriculture has created a biosecurity program to fight invasive species on several fronts by:

- (1) Administering pre-entry measures to minimize the risk of invasive pests entering the State;
- (2) Conducting port-of-entry inspections to detect and quarantine or destroy pests upon arrival; and
- (3) Administering post-entry measures to mitigate the establishment of pests in the State.

The department has also supported the growth of Hawaii's agriculture by attempting to reduce the State's dependency on imported agricultural products that may contain pests. The legislature finds that sufficient support for a biosecurity program is vital to the public's health and welfare.

The purpose of this Act is to establish and fund the department of agriculture's biosecurity program.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

#### "PART . BIOSECURITY PROGRAM

**§150A-A Biosecurity program; establishment.** The department shall establish a biosecurity program authorized under this chapter that shall interface with other relevant state law; provided that the biosecurity program is not inconsistent with federal law.

**§150A-B Objectives of biosecurity program.** The objectives of the biosecurity program shall be to:

- (1) Establish a multi-dimensional system to prevent the entry into the State and interisland movement of pests and prohibited or restricted organisms without a permit; and
- (2) Respond effectively to eradicate, control, reduce, and suppress incipient pest populations and established pests and seize and dispose of prohibited or restricted organisms without a permit.

**§150A-C General actions to achieve objectives.** To achieve the objectives of the biosecurity program, the department shall plan for and, within available legislative appropriations, implement the following:

- (1) Work with government agencies and agricultural commodity exporters of other states and countries to establish pre-entry inspection programs under which inbound cargo into the State is inspected at the ports of departure or other points outside the State;
- (2) Establish, operate, or participate in operating port-of-entry facilities where multiple government agencies may inspect, quarantine, fumigate, disinfect, destroy, or exclude as appropriate, articles that may harbor pests or exclude, articles that are prohibited or restricted without a permit, with the goals of:
  - (A) Performing inspections in an efficient, effective, and expeditious manner for the government agencies involved and for cargo owners, carriers, and importers; and
  - (B) Providing for the proper and safe storage and handling of cargo, especially agricultural and food commodities, awaiting inspection;
- (3) Develop, implement, and coordinate post-entry measures to eradicate, control, reduce, and suppress pests and, as appropriate, eradicate or seize and dispose of prohibited or restricted organisms without a permit that have entered the State;
- (4) Collaborate with relevant government agencies, agricultural commodity importers, and other persons to examine and develop joint integrated systems to better implement the biosecurity program;
- (5) Improve cargo inspection capabilities and methods, including enhancement of the content and submission requirements for cargo manifests and agricultural commodity ownership and movement certificates;
- (6) Promote the production of agricultural commodities in the State to reduce cargo shipments of imported commodities into the State; and
- (7) Provide public education on the negative effects of pests and prohibited or restricted organisms without a permit, to the environment and economy of the State.

**§150A-D Biosecurity program; charges; costs.** (a) The department shall set and impose charges for the inspection, quarantine, and eradication of pests in accordance with this chapter and chapter 141. The department shall deposit the charges into the pest inspection, quarantine, and eradication fund established pursuant to section 150A-4.5.

(b) The department shall set the charges at amounts intended to generate revenues that, when combined with federal and other funds, are sufficient to pay for the operating and maintenance cost of the program and debt service on bonds issued to fund facilities constructed for the program.

**§150A-E Federal and other funds.** The department shall place high priority on seeking and applying for federal and other funds for the biosecurity program.

**§150A-F Schedule of appropriations and expenditures for program.** (a)

By January 1, 2009, the department shall prepare a schedule of proposed annual appropriations for the biosecurity program for the ensuing six fiscal years that represents the department's realistic expectation as to the amounts necessary to effectively operate the program, yet remain within the constraints of projected state revenue growth.

(b) By January 1 of each fiscal year thereafter, the department shall update the schedule to include the following information, as applicable, for the immediate past fiscal year, current fiscal year, and ensuing five fiscal years:

- (1) The proposed appropriations submitted or to be submitted by the department to the governor for the biosecurity program;
- (2) The proposed appropriations submitted or to be submitted by the governor to the legislature in the executive or supplemental budget;
- (3) The actual appropriations by the legislature; and
- (4) The actual expenditures.

(c) The department shall submit each required schedule to the legislature no later than twenty days prior to the convening of each regular session of the legislature.

(d) The department may submit with each schedule a narrative commenting on the effects of any variance between the actual expenditure for the biosecurity program during a fiscal year and proposed appropriation submitted by the department to the governor for that fiscal year.

**§150A-G Annual report.** The department shall submit an annual report on the biosecurity program to the legislature no later than twenty days prior to the convening of each regular session of the legislature. The schedule required under section 150A-F shall be included in the pertinent annual report.”

SECTION 3. Section 141-2, Hawaii Revised Statutes, is amended to read as follows:

**“§141-2 Rules.** Subject to chapter 91 the department of agriculture shall adopt, amend, and repeal rules not inconsistent with law, for and concerning:

- (1) The introduction, transportation, and propagation of trees, shrubs, herbs, and other plants;
- (2) The quarantine, inspection, fumigation, disinfection, destruction, or exclusion, either upon introduction into the State, or at any time or place within the State, of any nursery-stock, tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root, or rhizome; any nut, fruit, or vegetable; any grain, cereal, or legume in the natural or raw state; any moss, hay, straw, dry-grass, or other forage; any unmanufactured log, limb, or timber; or any other plant growth or plant product unprocessed or in the raw state; any sand, soil, or earth; any live bird, reptile, insect, or other animal, in any stage of development, that is in addition to the so-called domestic animals, which are provided for in section 142-2; and any box, barrel, crate, or other containers in which the articles, substances, or objects have been transported or contained, and any packing material used in connection therewith, ~~which~~ that is or may be diseased or infested with insects or likely to assist in the transmission or dissemination of any insect or plant disease injurious, harmful, or detrimental, or likely to become injurious, harmful, or detrimental to the agricultural or horticultural industries or the forests of the State, or ~~which~~ that is or may be in itself injurious, harmful, or detrimental to the same (included therein may be rules governing the ~~shipping~~ trans-

portation of any of the articles, substances, or objects enumerated above in this section between different localities on any one of the islands within the State<sup>1</sup>;

- (3) The prohibition of importation into the State, from any or all foreign countries[;] or from other parts of the United States, or the shipment from one island within the State to another island therein, or the transportation from one part or locality of any island to another part or locality of the same island, of any specific article, substance, or object or class of articles, substances, or objects, among those enumerated above in this section, [~~which~~] that is diseased or infested with insects or likely to assist in the transmission or dissemination of any insect or plant disease injurious, harmful, or detrimental or likely to be injurious, harmful, or detrimental to the agricultural or horticultural industries, or the forests of the State, or [~~which~~] that is or may be in itself injurious, harmful, or detrimental to the same;
- (4) The preparation by cargo carriers of manifests of cargo transported into the State or between islands of the State and the submission of the manifests to the department; and
- [(4)] (5) The manner in which agricultural product promotion and research activities may be undertaken, after coordinating with the agribusiness development corporation.

All rules adopted under this section shall have the force and effect of law.”

SECTION 4. Section 141-5, Hawaii Revised Statutes, is amended to read as follows:

“§141-5 **Charges for inspection, etc.** The department of agriculture [~~shall~~], with the approval of the governor, shall adopt a reasonable scale of charges, which may be changed from time to time, for the inspection, disinfection, fumigation, and quarantine[;] that is authorized, required, or permitted by this chapter or chapter 142 [~~or~~], 150[.], or 150A. Certificates and permits in [~~such~~] these chapters [~~provided for~~] concerning articles or animals imported, or proposed to be imported, into the State, and the charges [~~so~~] provided for, shall be paid for in advance before any certificate or permit is delivered, or any of [~~such~~] the articles or animals are permitted to be landed. If thereafter further expense is incurred in the inspection, treatment, or quarantine of any of [~~such~~] the articles or animals, the charges [~~therefor~~] shall be paid before any of [~~such~~] the articles or animals shall be delivered.”

SECTION 5. Section 150A-4.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The moneys in the pest inspection, quarantine, and eradication fund shall be expended by the department for the operation of pest inspection, quarantine, eradication, biosecurity, and monitoring programs, related facilities, and the execution of emergency remedial measures when pests are detected in the course of inspection and quarantine activities by the department.”

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2008-2009 for the biosecurity program of the department of agriculture.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 7. There is appropriated out of the pest inspection, quarantine, and eradication fund of the State of Hawaii the sum of \$6,000,000 or so much thereof

as may be necessary for the fiscal year 2008-2009 for the biosecurity program of the department of agriculture.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 8. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Prior to amendment a close parenthesis appeared here.

**ACT 237**

H.B. NO. 2661

A Bill for an Act Relating to Special Purpose Revenue Bonds to Assist Industrial Enterprises.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is in the public interest to encourage the development of facilities to convert renewable energy resources into electrical energy to be made available for consumption by the general public. The legislature further finds that Hui Mana 'Oma'o is engaged in the development of facilities to convert potential renewable energy resources into electrical energy to be made available for consumption by the general public. The legislature finds that such encouragement is urgently needed on the island of Oahu, where more than \$2,000,000 is spent daily on imported fossil fuels for the generation of electricity.

SECTION 2. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 3. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$38,000,000, in one or more series, for the purpose of assisting Hui Mana 'Oma'o or an enterprise or commercial entity in which Hui Mana 'Oma'o possesses a vested equity interest, for establishment of facilities to convert renewable energy resources into electrical energy. The legislature hereby finds and determines that the combining of two or more intermittent renewable energy resources for the purpose of enhancing the reliability of the resulting electrical energy produced constitutes a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 4. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2013, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 3 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 3. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2013.

SECTION 7. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 238

S.B. NO. 3030

A Bill for an Act Relating to Mixed Martial Arts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 440E-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In addition to the payment of other fees and moneys due under this chapter, a licensed promoter shall pay:

- ~~[(1) A license fee of three per cent of the first \$50,000 of the total gross receipts from admission fees to an event, exclusive of federal, state, and local taxes;~~
- ~~(2) A license fee of two per cent of the total gross receipts over \$50,000 from admission fees to an event, exclusive of federal, state, and local taxes;]~~
- (1) For fiscal years 2009-2010 to 2012-2013, a license fee of four per cent of the first \$50,000 of the total gross receipts and three per cent of the total gross receipts over \$50,000 from admission fees to an event, exclusive of federal, state, and local taxes;
- (2) For fiscal years beginning July 1, 2013, a license fee that is six per cent of the total gross receipts from admission fees to an event, exclusive of federal, state, and local taxes;
- (3) [Two] In addition to the license fees established in paragraphs (1) and (2), a licensed promoter shall also pay two per cent of the gross sales price for the sale, lease, or other exploitation of broadcasting, television, Internet, and motion picture rights for a contest or an event, without any deductions for commission, brokerage fee, distribution fees, advertising, contestants' purses, or any other expenses or charges, including federal, state, or local taxes; and
- (4) Two per cent of the gross receipts from subscription or admission fees, exclusive of federal, state, and local taxes, charged for viewing [within the State of] a simultaneous or pay per view telecast of [an] a contest or event[; provided that payments].

Payments under this subsection shall be deposited into a separate account in the compliance resolution fund and shall be used to cover the costs of administering this chapter.”

SECTION 2. At each promoter’s license renewal period, each promoter shall pay an additional surcharge fee of \$16,750, or any other amount determined by the department of commerce and consumer affairs to be appropriate that shall be deposited into the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes. The department may adjust the additional surcharge fee to equitably apportion the cost among the promoters based on the number of licensed promoters. Upon the full payment of \$335,000 for fiscal years 2007-2008 and 2008-2009 to cover the cost of implementing the provisions of chapter 440E, Hawaii Revised Statutes, no surcharge shall be assessed thereafter and any funds in excess of this amount shall remain in the compliance resolution fund.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

(Became law on July 8, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

## ACT 239

S.B. NO. 69

A Bill for an Act Relating to Health Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to make health insurance available until December 31, 2008, for the children of those employees who were employed by a Hawaii corporation which, between February 29, 2008 and September 30, 2008, filed for bankruptcy and ceased doing business in Hawaii or ceased doing business in Hawaii. This Act does so by expanding eligibility for the Hawaii children’s health care program.

SECTION 2. Act 236, Session Laws of Hawaii 2007, is amended by amending section 3 to read as follows:

“SECTION 3. (a) There is established the Hawaii children’s health care program as a temporary three-year pilot program to provide health care coverage to uninsured children who live in Hawaii. The department of human services shall provide health care coverage through a public-private partnership, established as a contract to provide health and human services pursuant to chapter 103F, Hawaii Revised Statutes, between the department and one or more managed care plans operating in the state under chapter 432, Hawaii Revised Statutes, that offers accident and health or sickness insurance plans.

(b) It is not the intent of the legislature to discourage employers from offering to pay, or from paying for, dependent coverage for their employees, nor that this Act supplant employer-sponsored dependent coverage plans.

(c) To qualify, a child shall:

- (1) Be at least thirty-one days to less than nineteen years old;
- (2) Be living in Hawaii;



- (3) Have been uninsured continually for at least six months; provided that infants thirty-one days to six months of age shall have been uninsured continually since birth; and
- (4) Have been ineligible during the six months the child was uninsured for any other state or federal health care coverage and be currently ineligible for any other state or federal health care coverage; provided that:
  - (A) All children enrolled in a managed care plan's children's plan as of the effective date of this Act shall be eligible for enrollment into the Hawaii children's health care program without being subject to the requirement of being uninsured for the precedent six months in subsection (c)(3);
  - (B) Children who are at least thirty-one days but less than nineteen years old who become ineligible for a med-QUEST division health care coverage program due to an increase in family income may enroll in the program upon disenrollment from a med-QUEST division health care coverage program; and
  - (C) Uninsured newborn children who are one day, but not more than thirty days of age who were enrolled in the Hawaii infant health care program shall be eligible for enrollment in the Hawaii children's health care program without being subject to the requirement of being uninsured for the precedent six months in subsection (c) (3).

(d) In lieu of paragraphs (c)(3) and (4), a child may also qualify if the child is uninsured due to the loss of the parent's or guardian's health insurance; provided that the child's parent or guardian was employed by a Hawaii employer that was covered by and in compliance with chapter 393, Hawaii Revised Statutes, and that, between February 29, 2008 and September 30, 2008, filed for bankruptcy and ceased doing business in Hawaii or ceased doing business in Hawaii. The eligibility requirements of subsections (c)(1) and (2) shall still apply. Furthermore, coverage received based upon meeting the eligibility requirements of this subsection shall continue only until the earlier of the following:

- (1) The former employee parent or guardian of the covered child becomes employed and covered by a prepaid health care plan; or
- (2) December 31, 2008.

~~(d)~~ (e) The department of human services and the managed care plans shall share equally in the cost of the premium for each child enrolled in the program subject to the appropriation of general funds for the program.

~~(e)~~ (f) The department of human services shall pay the State's share of the premiums under the program on a quarterly basis.

~~(f)~~ (g) The managed care plans participating in the pilot program shall be responsible for determining the eligibility of program applicants and of enrolling applicants in the pilot program.

~~(g)~~ (h) The managed care plans participating in the program shall provide a quarterly report to the department of human services and the legislature on the number of children enrolled in the program.

~~(h)~~ (i) The department shall ensure that other private organizations have the opportunity to partner with the State to offer coverage to uninsured children under the program; provided that plan benefits to be provided shall be equal to or better than those offered through the program established by the State and managed care plans under subsection (a).

~~(i)~~ (j) The department of human services and any participating managed care plan shall report to the legislature no later than twenty days prior to the start of the 2008 and 2009 regular sessions on:

- (1) Any problems experienced with the program involving crowding out eligible participants;
- (2) Instances of people canceling their previous coverage to receive this free coverage;
- (3) The amount of funding used and for what purposes;
- (4) Any other problems encountered in the administration of the program; and
- (5) Any proposed legislation.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that the provision of this Act that amend section 3 of Act 236, Session Laws of Hawaii 2007, shall be repealed on December 31, 2008; provided further that the underlying provisions of section 3 of Act 236, Session Laws of Hawaii 2007, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Became law on July 8, 2008, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

## ACT 240

H.B. NO. 2763

A Bill for an Act Relating to the Children of Incarcerated Parents Task Force.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The children of incarcerated parents task force was established by Senate Concurrent Resolution No. 128 (2005), and was extended by Act 256, Session Laws of Hawaii 2006, to enable the task force to continue to develop programs to aid children of incarcerated parents. The task force ceased to exist on December 31, 2007.

The purpose of this Act is to re-establish the children of incarcerated parents task force so it can continue to develop programs to aid children of incarcerated parents, strengthen the family bond, and help break the cycle of crime and violence.

SECTION 2. The department of public safety and the department of human services shall re-establish the children of incarcerated parents task force previously established by Senate Concurrent Resolution No. 128 (2005) and Act 256, Session Laws of Hawaii 2006, to identify and develop programs and support services for children of incarcerated parents, as well as programs to strengthen the bond between the families. The task force shall be re-established as provided in this Act.

The goals of the task force are to:

- (1) Develop a system to identify children of incarcerated parents;
- (2) Develop programs and support services for these children;
- (3) Provide support for incarcerated parents, where appropriate;
- (4) Develop programs to strengthen these families; and
- (5) Review other jurisdictions’ activities, policies, directives, and laws relating to children of incarcerated parents to derive best practices models.

SECTION 3. The task force shall include the following members:

- (1) The director of public safety or the director’s designee;
- (2) The deputy director of the corrections division of the department of public safety or the deputy director’s designee;

- (3) The institutions division administrator of the community correctional centers and the correctional facilities or the administrator's designee;
- (4) The director of health or the director's designee;
- (5) The director of human services or a designee;
- (6) The executive director of the office of youth services or the executive director's designee;
- (7) The chief justice of the supreme court or the chief justice's designee;
- (8) A member of the board of trustees of the office of Hawaiian affairs or a designee;
- (9) A representative of the family court of the first circuit;
- (10) The superintendent of education or the superintendent's designee;
- (11) The attorney general or the attorney general's designee;
- (12) The prosecuting attorney of each county or the prosecuting attorney's designee;
- (13) A representative of the child protective services agency of the department of human services;
- (14) The director of the Children's Justice Center of Oahu or the director's designee;
- (15) A representative from the adult probation division of the judiciary;
- (16) A member representing each of the county police departments, appointed by the respective police chiefs;
- (17) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by Blueprint for Change;
- (18) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by Child and Family Services;
- (19) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by the Community Alliance on Prisons;
- (20) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by the Good Beginnings Alliance;
- (21) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by the Hawaii Juvenile Justice Project;
- (22) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by Keiki O Ka Aina Family Learning Centers;
- (23) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by Neighborhood Place of Puna;
- (24) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by Neighborhood Place of Wailuku;
- (25) Public members with experience working with children of incarcerated parents to be selected by the Children's Justice Center;
- (26) A representative of the Queen Liliuokalani Children's Center;
- (27) Representatives of youth groups from the island of Kauai who address the issues of incarcerated parents;
- (28) A faculty member of the University of Hawaii department of sociology or a designee; and
- (29) The administrator of the intake service centers of the department of public safety or the administrator's designee.

The members of the task force shall select the chairperson of the task force from among themselves and shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

SECTION 4. The task force shall be administratively attached to the department of human services. The department of public safety and the department of human services shall each provide administrative, clerical, technical, and professional support services necessary to assist the task force in achieving its purpose as required under this Act. The task force shall cease to exist after June 30, 2012.

SECTION 5. The task force shall submit annual reports to the legislature not later than twenty days prior to the convening of the regular sessions of 2009, 2010, 2011, and 2012. The task force shall make the reports available to the general public in printed form and on a website accessible to the public over the Internet.

The annual reports shall be completed with the assistance of the department of public safety and shall include:

- (1) A summary of significant findings regarding children of incarcerated parents;
- (2) Statewide statistics indicating the number of children with incarcerated parents in the state, including data on age and educational, financial, geographic, and socioeconomic demographics of incarcerated parents;
- (3) Statewide data and data analysis to determine the relationship between specific variables and the frequency of parental incarceration;
- (4) Statewide data and data analysis to determine the relationship between parental incarceration and various adverse outcomes for children of incarcerated parents; and
- (5) Multiple theoretical models for improving the welfare and general well-being of children of incarcerated parents.

SECTION 6. This Act shall take effect upon its approval.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 241

H.B. NO. 2062

A Bill for an Act Relating to Long-Term Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature has made it a priority to find solutions to Hawaii's predicted long-term care crisis based on the state's rapidly aging population. Many families in Hawaii choose to care for elderly or disabled family members in their homes rather than in a facility. However, in-home care does not allow the same financing options through Medicaid as licensed nursing facilities. Additionally, the medical needs of the person being cared for may change, thereby requiring a different type of care.

It is the legislature's intent to promote independence and choice by allowing individuals, who are eligible under Medicaid to receive nursing facility care, to receive the full spectrum of service options available, including:

- (1) Admittance to a nursing facility;
- (2) The option to remain in the individual's community and receive home- and community-based long-term care, support, and services; and

- (3) The option to relocate from a nursing facility back to the individual's community and to receive home- and community-based long-term care, support, and services.

SECTION 2. The department of human services shall apply to the federal Centers for Medicare and Medicaid Services to allow persons who are eligible to receive medicaid funds for care at nursing home facilities to remain at home and receive home- and community-based long-term care; provided that the cost for the home- and community-based services shall not exceed the total expenditures that would have been incurred if the person received facility-based long-term care, services, or support.

SECTION 3. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**ACT 242**

H.B. NO. 2519

A Bill for an Act Relating to Health Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that many Hawaii residents are increasingly unable to obtain timely and appropriate health care because of physician and dentist shortages, which primarily affect the rural areas of the state.

Because of the need to repay student loans to fund a physician's or dentist's increasingly high cost of professional education, these health care professionals are discouraged from working in shortage areas, which generally provide lower financial earnings for medical professionals.

The legislature finds that the establishment of various programs such as student loan repayment and state-funded physician and dentist stipend programs may be used to encourage and enable physicians and dentists to provide care in shortage areas.

The purpose of this Act is to create a working group to develop a plan to establish a program known as the Hawaii health corps program to address physician and dentist shortages that includes student loan repayment and stipend programs.

SECTION 2. (a) There is established the Hawaii health corps program working group to be placed within the department of business, economic development, and tourism, for administrative purposes only, to develop a plan to create a program to be known as the Hawaii health corps program that will address physician and dentist shortages through programs such as student loan repayments and stipends. The working group shall be composed of:

- (1) The director of health or the director's designee;
- (2) The director of human services or the director's designee;
- (3) The director of business, economic development, and tourism or the director's designee;
- (4) The dean of the University of Hawaii's John A. Burns school of medicine or the dean's designee;
- (5) The administrator of the state health planning and development agency or the administrator's designee;
- (6) A member of the senate appointed by the senate president; and

- (7) A member of the house of representatives appointed by the speaker of the house of representatives.
- (b) The members of the working group shall designate a chair from among its members.
- (c) The working group shall develop a plan to establish the Hawaii health corps program to include the following:
- (1) Up to twenty qualified participants may be selected each year to receive tuition loan repayments; provided that there shall be not more than one hundred participants at any given time;
  - (2) Qualified participants shall agree to serve in underserved and rural areas, as designated by the working group;
  - (3) Loan repayments to fully satisfy the loan of a qualified participant in the Hawaii health corps program shall be paid over a five-year period with a minimum repayment of twenty per cent per year;
  - (4) Qualified participants shall serve a minimum of five years in the Hawaii health corps program; provided that participants who do not serve the full five years shall repay all loan payments plus any interest as determined by the working group;
  - (5) Priority placement in the Hawaii health corps program will be for graduates of the University of Hawaii's John A. Burns school of medicine;
  - (6) Persons shall be selected to serve in the Hawaii health corps program regardless of specialty;
  - (7) Qualified participants in the Hawaii health corps program shall commit to serve as first responders in the event of a declared emergency, or at the request of the director of health; and
  - (8) The Hawaii health corps program shall be administered by the department of business, economic development, and tourism.
- (d) The Hawaii health corps program working group shall prepare a plan to be fully implemented by January 1, 2010, and submit the plan and any proposed legislation to the legislature not later than twenty days prior to the convening of the regular session of 2009.

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 243

H.B. NO. 2520

A Bill for an Act Relating to Caregivers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The joint legislative committee on family caregiving was created to develop a comprehensive public policy to strengthen support for family caregivers. The committee's mandate was expanded in 2007 to require the committee to explore the provision of wage replacement benefits to employees who need time off from work to care for a family member with a serious health condition.

In furtherance of this mandate, the committee held informational hearings on the subject and contracted with the University of Hawaii's school of social work to conduct a comprehensive assessment of the needs of care recipients aged 60 or older with physical or cognitive disabilities and the needs of their family caregivers. In addition to providing the demographics of care recipients and their family caregiv-

ers, researchers were asked to focus on the impact family caregiving has in general on employment to determine, among other things, whether the relationship warrants wage replacement benefits.

The preliminary results of the needs assessment substantiate the critical role that family caregiving has in Hawaii's health and long-term care system. According to the needs assessment, over 25 per cent of Hawaii's households contain at least one individual providing informal, unpaid care for an adult aged 60 or older with physical or cognitive disabilities. This percentage is expected only to increase. Projections indicate that by 2020, more than one in four individuals will be aged 60 or older, and an individual's need for personal care assistance due to physical, sensory, cognitive, and self-care disabilities increases with age.

The legislature finds that given the preliminary needs assessment data, wage replacement benefits are an appropriate and effective means of supporting family caregivers. The data indicates that the average age of family caregivers is 54 years old, well below the age of retirement. Over 55 per cent of the family caregivers are employed, and of these, over 26 per cent indicate that their employment is affected by their caregiving responsibilities. Reduction in work hours was an often-cited effect, followed by turning down promotions and taking leaves of absence. Nearly all of the family caregivers stated that they frequently rearrange their work schedules, and over 77 per cent take time off from work to deal with caregiving responsibilities. The most startling effect is that over 96 per cent of the unemployed family caregivers indicated that they retired to deal with family caregiving responsibilities.

Over the years, Hawaii has experienced a labor shortage that threatens to debilitate some areas of the economy. According to United States Census Bureau projections, one out of six workers in Hawaii is at least 55 years old and nearing retirement. With the current unemployment rate below three per cent, Hawaii employers need to do more than increase salaries to retain employees. More emphasis should be placed on accommodating employees' family needs in a way that encourages and enables employees to participate in the workforce.

When polled for the needs assessment, most family caregivers indicated that no family caregiving benefits were offered by their employers. Overwhelmingly, family caregivers are in favor of public policies that support family caregiving. Women are significantly more likely than men to support public policies, which closely reflects the estimate that over 73 per cent of family caregivers are women.

The current temporary disability insurance law provides an eligible employee with up to 26 weeks of temporary disability benefits if the employee suffers a qualifying disability that prevents the employee from working. Employers are responsible for providing temporary disability insurance coverage to eligible employees but may deduct and withhold contributions from each employee of one-half the cost of providing the coverage as long as the contributions do not exceed one-half per cent of the weekly wages earned by the employee.

The purpose of this Act is to require the joint legislative committee on aging in place to explore the provision of wage replacement benefits to employees who need to take time off from work to care for a family member with a serious health condition.

SECTION 2. (a) There is established a working group, as part of and reporting to the joint legislative committee on aging in place, which shall explore the provision of wage replacement benefits to employees who need time off from work to care for a family member with a serious health condition.

(b) The working group shall:

- (1) Explore funding mechanisms for a paid family leave program, including but not limited to income tax credits, temporary disability insurance benefits, and unemployment benefits;

- (2) Review the research findings of the joint legislative committee on family caregiving that was conducted during the 2007 legislative interim as it relates to a paid family leave program;
  - (3) Analyze the caregiver needs assessment to determine the factors affecting the well-being of employed family caregivers;
  - (4) Review the contents of House Bill No. 2520, House Draft 3<sup>1</sup>, which was introduced during the regular session of 2008;
  - (5) Review paid family leave bills in California, Washington, and New Jersey;
  - (6) Consider drafting legislation for introduction in the regular session of 2009 that addresses wage replacement for caregivers of a family member with a serious health condition; and
  - (7) Inventory the eldercare policies and practices that currently exist in the workplace and the extent to which they exist.
- (c) The members of the working group shall include a representative of each of the following entities as appointed by the director, or the equivalent, of that entity:
- (1) Department of taxation;
  - (2) Department of labor and industrial relations;
  - (3) Department of human services;
  - (4) Department of health, executive office on aging;
  - (5) University of Hawaii, department of economics;
  - (6) National Federation of Independent Business;
  - (7) The Chamber of Commerce of Hawaii;
  - (8) Society for Human Resource Management;
  - (9) International Longshore & Warehouse Union Local 142;
  - (10) Hawaii Teamsters and Allied Workers;
  - (11) Policy advisory board for elder affairs;
  - (12) Hawaii Government Employees Association;
  - (13) Hawaii Family Caregiver Coalition;
  - (14) Kokua Council; and
  - (15) International Brotherhood of Electrical Workers.
- (d) The members of the working group shall designate a chair from among its members.
- (e) The working group shall serve without compensation and shall receive no reimbursements for expenses. After making its report to the joint legislative committee on aging in place, the working group shall cease to exist on June 30, 2009.
- (f) The department of labor and industrial relations shall provide administrative support for the working group. The legislative reference bureau shall provide legislative drafting services for the working group.
- (g) The joint legislative committee on aging in place shall report the findings and recommendations of the working group, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2009.

**SECTION 3.** This Act shall take effect upon its approval.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Act 243.



A Bill for an Act Relating to Campaign Spending.

*Be It Enacted by the Legislature of the State of Hawaii:*

PART I  
PILOT COMPREHENSIVE PUBLIC FUNDING FOR ELECTIONS  
TO THE HAWAII COUNTY COUNCIL

SECTION 1. There is established a pilot project establishing a comprehensive public funding program for the county of Hawaii council elections. The pilot project shall be for a period of three election cycles, beginning with the 2010 elections.

SECTION 2. **Definitions.** Except for terms that are specifically defined in this part, terms that are defined under section 11-191, Hawaii Revised Statutes, shall apply to this part. When used in this part, unless the context clearly requires otherwise:

“Candidate” means an individual who seeks nomination for election or seeks election to the Hawaii county council, and who meets the criteria of section 4 and section 11-191, Hawaii Revised Statutes.

“Candidate’s committee” means a committee, as defined in section 11-191, Hawaii Revised Statutes, which makes an expenditure or accepts a contribution on behalf of a candidate for nomination for election to the Hawaii county council, with the candidate’s authorization. A candidate shall have only one authorized candidate’s committee.

“Certification for comprehensive public funding” means the decision by the commission that a candidate is certified to receive public funding in accordance with this part.

“Certified candidate” or “comprehensive publicly funded candidate” means a participating candidate who is certified by the commission as eligible for comprehensive public funding under this part and who agrees to abide by the requirements of this part.

“Commission” means the campaign spending commission established under section 11-192, Hawaii Revised Statutes.

“Contested election” means, in a primary election, the certified candidate is opposed by one or more candidates for the nomination; and, in a general election, the certified candidate is opposed by one or more candidates for election to the office.

“County” means the county of Hawaii.

“County council” means the county council of the county of Hawaii.

“Declaration of intent to seek comprehensive public funding” means the form completed by a participating candidate and the filing of which triggers the participating candidate’s ability to begin collecting qualifying contributions.

“District” means a county district, as established in accordance with section 46-1.5, Hawaii Revised Statutes.

“Equalizing funds” means additional public funds released by the commission to a comprehensive publicly funded candidate to allow the publicly funded candidate to stay financially competitive with a nonparticipating candidate in a contested election and to penalize a nonparticipating candidate for filing false or late reports.

“Excess expenditure” means the amount of comprehensive public funds spent or obligated to be spent by a comprehensive publicly funded candidate in excess of one hundred per cent of the allocated funds for a primary election, general election, or both.

“General election campaign period” means the period beginning the day after the primary election and ending on general election day.

“General election year” means the period commencing January 1 of an even-numbered year in which a general election is held and ending on general election day.

“Independent expenditure” means an expenditure by any person for a communication that expressly advocates the nomination, election, or defeat of a clearly identified certified candidate or nonparticipating candidate and that is not made in concert or cooperation with or as part of any coordinated activity or at the request or suggestion of the certified candidate or nonparticipating candidate, a candidate’s committee, or their agents. For the purposes of this definition, “clearly identified” means that the name, likeness, photograph, or drawing of the certified candidate or nonparticipating candidate is used, or the identity of the certified candidate or nonparticipating candidate is apparent by unambiguous reference.

“Nonmonetary contribution” means a contribution other than of money that may include goods or services.

“Nonparticipating candidate” means a candidate who does not qualify for or receive public funding during an election period and is involved in a contested election with a certified participating candidate.

“Participating candidate” means a candidate who is seeking certification for comprehensive public funding under this part.

“Primary election campaign period” means the period in a primary election year beginning with the certification for comprehensive public funding under this part and ending on primary election day.

“Public funding” or “public funds” means campaign funds from the Hawaii election campaign fund under section 11-217, Hawaii Revised Statutes, received by an eligible candidate pursuant to this part.

“Qualifying contribution” means a \$5 monetary contribution made in the form of a check or a money order payable to the Hawaii election campaign fund for purposes of meeting the criteria of section 7.

“Qualifying period” means the period in a general election year, beginning January 1 and ending on the deadline for filing candidate nomination papers during which a candidate may collect qualifying contributions to qualify for comprehensive public funding under this part; provided the commission has determined that the Hawaii election campaign fund has sufficient funds to make payments to comprehensive publicly funded candidates during the election period.

“Seed money” means contributions made to a participating candidate by an individual in accordance with section 5 that shall be expended for the purpose of determining campaign viability.

“Surplus campaign funds” means any campaign contributions not spent during a prior election period by a participating candidate who previously sought election as a privately funded candidate.

**SECTION 3. Sufficiency of funding for comprehensive public funding.** On September 1 of each odd-numbered year before the general election years of 2010, 2012, and 2014, the commission shall determine whether there is a minimum of \$3,500,000 in the Hawaii election campaign fund established under section 11-217, Hawaii Revised Statutes, to certify participating candidates during the next election and provide funding for comprehensive public funding for elections under this part.

If the commission determines that there is sufficient funding, then within five business days, the commission shall publish notice statewide, pursuant to section 1-28.5, Hawaii Revised Statutes, that the comprehensive public funding program shall become effective on January 1 of the following year. If there is insufficient funding, then this part shall be inoperative.

If this part is inoperative, candidates may seek public funding as provided under subpart B of part XII of chapter 11, Hawaii Revised Statutes.

**SECTION 4. Qualifications for comprehensive public funding.** (a) A candidate may seek comprehensive public funding for the primary election campaign period if the candidate:

- (1) Resides in the district from which election is sought as of the date of the filing of nomination papers for the primary election in the general election year in which the candidate seeks to be nominated or elected;
- (2) Is a registered voter in the district from which election is sought;
- (3) Files a declaration of intent to seek comprehensive public funding with the commission between January 1 of the election year and thirty days before the closing date to file nomination papers to run for office for which the candidate intends to seek election;
- (4) Collects a \$5 qualifying contribution in accordance with section 7;
- (5) Accepts only the following contributions prior to applying for certification as a comprehensive publicly funded candidate:
  - (A) Seed money contributions until the candidate files a declaration of intent to seek comprehensive public funding; and
  - (B) Qualifying contributions that may be accepted only after filing the declaration of intent to seek comprehensive public funding;
 and
- (6) Files an application for certification for comprehensive public funding with the commission.

(b) A candidate is qualified to seek comprehensive public funding for the general election campaign period if the candidate:

- (1) Was certified as a comprehensive publicly funded candidate during the primary election campaign period immediately preceding the general election in which the funds under this part are provided; and
- (2) Received a sufficient number of votes to appear on the ballot in the general election or is otherwise certified by the Hawaii county clerk to be placed on the ballot in the general election.

**SECTION 5. Seed money contributions; limitations on use of seed money; penalties.** (a) The use of seed money shall be limited to expenditures necessary to determine whether sufficient support exists for a participating candidate to run for office as a comprehensive publicly funded candidate.

(b) The amount of seed money received or expended, or both, by a candidate seeking eligibility for comprehensive public funding for a county council seat shall not exceed \$3,000. A candidate may use personal funds, surplus campaign funds, or receive contributions from individuals in an aggregate amount no greater than \$250 each.

(c) A participating candidate shall not accept contributions of seed money from any individual whose contributions are prohibited under subpart B of part XII of chapter 11, Hawaii Revised Statutes. All contributors whose seed money has been accepted shall be issued a receipt by the participating candidate.

(d) Seed money shall not be collected after the candidate has filed the declaration of intent to seek comprehensive public funding, which must be filed no later than thirty days before the closing date to file nomination papers to run for office for which the candidate intends to seek election. The candidate may spend seed money only until the candidate is certified by the commission as a comprehensive publicly funded candidate or the closing date to file nomination papers to run for office for which the candidate intends to seek election, whichever occurs first.

(e) Any unspent seed money shall be deducted from the base amount of public funding if the certified candidate does not donate the unspent seed money to the Hawaii election campaign fund.

**SECTION 6. Restriction on use of surplus campaign funds.** A certified candidate who has surplus campaign funds from a previous election is prohibited from using those funds for anything other than seed money pursuant to section 5(d) and in-office constituent communications pursuant to section 11(b). The surplus campaign funds shall be frozen and maintained in a separate depository account from that established for the comprehensive public funds under section 16. The candidate shall continue to file reports on the surplus campaign funds in accordance with subpart B of part XII of chapter 11, Hawaii Revised Statutes, or as otherwise may be required by the commission.

**SECTION 7. Qualifying contributions.** (a) Each qualifying contribution shall meet the requirements of this section. To be counted as a qualifying contribution, a contributor to a candidate for a seat on the Hawaii county council shall be a registered voter who resides within the county district to which the candidate seeks nomination or election at the time the contribution is given. The voter must not be given anything of value in exchange for the qualifying contribution.

(b) No qualifying contribution shall be collected prior to a candidate filing a declaration of intent to seek comprehensive public funding with the commission.

(c) Any receipt for a qualifying contribution shall be made in a form that may be prescribed by the commission.

(d) All qualifying contributions collected by candidates, whether or not the candidate is certified, shall be deposited into the Hawaii election campaign fund.

**SECTION 8. Certification of qualification for comprehensive public funds.** (a) Candidates seeking certification as a comprehensive publicly funded candidate shall submit to the commission an application for certification that contains at least two hundred printed names, addresses, and signatures and qualifying contributions for the county of Hawaii from registered voters in the district for which the candidate seeks office no later than thirty days prior to the primary election, signed by the participating candidate and the participating candidate's campaign treasurer under penalty of perjury. The clerk for the county of Hawaii shall verify that at least two hundred signatures and qualifying contributions were received from registered voters in the district for which the candidate seeks office, that the candidate resides in the district from which election is sought as of the date of the filing of nomination papers, and that the candidate is a registered voter in the district from which election is sought.

(b) The application shall also include any information deemed necessary and appropriate by the commission.

(c) The commission shall issue a decision to certify or deny certification of a candidate as a comprehensive publicly funded candidate within ten business days following receipt of the candidate's completed application for certification for comprehensive public funds, including verification of the information in subsection (a) by the clerk for the county of Hawaii.

(d) After a participating candidate is certified, the candidate's certification shall apply to both the primary and the general election, even if the candidate is unopposed in the primary election.

(e) Initial certification by the commission under subsection (c) and all determinations by the commission under this section are final and conclusive, except to the extent they are subject to examination and audit by the commission under section 10(a).

**SECTION 9. Comprehensive publicly funded candidates; contributions and expenditures; penalties.** (a) Except as authorized under section 12, a certified candidate shall comply with the following restrictions on contributions and expenditures:

- (1) Upon certification for comprehensive public funding and until the end of the general election campaign period, a candidate shall not accept for use in the campaign:
  - (A) Contributions from any person;
  - (B) Loans from any person, including a certified candidate;
  - (C) Contributions from political parties; and
  - (D) Any campaign material purchased or held from a date prior to filing the declaration of intent to seek comprehensive public funds;
 and
- (2) Upon certification for comprehensive public funding and until the end of the general election campaign period, a candidate shall not expend for campaign purposes:
  - (A) Any money except public funds issued by the commission;
  - (B) Public funds for purposes other than those permitted in this part;
  - (C) Public funds outside the applicable campaign period; and
  - (D) Public funds in excess of the comprehensive public funds allocated to the candidate, including equalizing funds.

(b) A certified candidate who accepts contributions in violation of this section shall be subject to a fine equal to three times the public funding received, in addition to any other action, fines, or prosecution under section 18 and subpart B of part XII of chapter 11, Hawaii Revised Statutes, or any provision of the Hawaii Penal Code.

(c) A certified candidate who makes expenditures of more than one hundred per cent of the public funds allocated to the candidate shall repay to the Hawaii election campaign fund an amount equal to three times the excess expenditures.

**SECTION 10. Comprehensive publicly funded candidate; reporting.**

(a) A certified candidate and the certified candidate's committee shall furnish to the commission complete campaign records, including all records of seed money contributions, qualifying contributions and expenditure. A candidate shall fully cooperate with any audit or examination by the commission.

(b) A certified candidate shall comply with the reporting requirements of subpart B of part XII of chapter 11, Hawaii Revised Statutes, in addition to those required under this part or that may be required by the commission.

(c) An individual who uses seed money to determine whether sufficient support exists to run for office as a comprehensive publicly funded candidate who is not already registered with the commission shall register as a candidate by filing the organizational report required by section 11-194, Hawaii Revised Statutes, within ten days of receiving more than \$100 in seed money, either from contributions or personal funds.

(d) All reports required by subpart B of part XII of chapter 11, Hawaii Revised Statutes, seed money reports, and post-election reports shall be filed with the commission.

- (e) Seed money reports shall be filed with the commission no later than:
  - (1) January 31 of an election year;
  - (2) April 30 of an election year; and
  - (3) Twenty days prior to the primary election.
- (f) Each report shall be current through:
  - (1) The six-month period ending on December 31 for the report filed on January 31;

- (2) The three-month period ending on March 31 for the report filed on April 30; and
- (3) Thirty days prior to the primary election for the report filed twenty days prior to the primary election.
- (g) The seed money reports shall include:
  - (1) The committee's name and address;
  - (2) The amount of cash on hand at the beginning of the reporting period;
  - (3) The reporting period and aggregate total for each of the following categories:
    - (A) Contributions;
    - (B) Expenditures; and
    - (C) Other receipts; and
  - (4) The cash on hand at the end of the reporting period.
  - (h) Schedules filed with the seed money reports shall also include:
    - (1) The amount and date of deposit of each contribution and the name and address of each contributor who makes contributions aggregating more than \$100 in an election period; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
    - (2) All expenditures made, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements must be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose; and
    - (3) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts.
    - (i) Post-election reports shall be submitted to the commission no later than twenty days after a primary election and no later than thirty days after a general election certifying that all public funds paid to the candidate have been used as required by this part. The reports shall include information regarding all expenditures made, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements must be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.
    - (j) All certified candidates shall file the reports required under this part by electronic means in the manner prescribed by the commission.

**SECTION 11. Comprehensive publicly funded candidate; continuing obligation.** (a) A certified candidate shall comply with all requirements under this part through the general election campaign period, except as provided in section 11(d), regardless of whether the certified candidate maintains eligibility for comprehensive public funding in the general election campaign period.

(b) Any surplus of funds up to \$4,000 for a certified candidate elected to the office sought may be carried over to pay for in-office constituent communications. Expenditures for these communications shall not exceed \$2,000 per year or \$4,000 for a two-year term.

(c) If the total surplus for a certified candidate who is elected to office falls under \$4,000, subsection (d) notwithstanding, the office holder shall be allowed to raise the difference with private contributions pursuant to subpart B of part XII of chapter 11, Hawaii Revised Statutes in an aggregate amount of \$2,000 per year;

provided that the contributions are received from an individual and each individual shall be limited to contributing \$250 for the election period.

(d) Except for seed money contributions and qualifying contributions a certified candidate who is elected to the office sought shall not accept private contributions from any person until either September 1 of the next odd-numbered year following the general election in which the candidate was last elected, or the date when the commission determines there are insufficient funds under section 3, whichever occurs earlier.

(e) If a certified candidate withdraws from seeking the nomination for or from the election, all unencumbered funds received by the candidate under this part shall be returned to the Hawaii election campaign fund within thirty days after withdrawal.

**SECTION 12. Sufficiency of public funding; amount of base public funding; disbursements.** (a) The commission shall not distribute comprehensive public funding to certified candidates that exceeds the total amount of \$300,000 for all candidates subject to this part in any given election year in which this part is operative.

(b) Beginning January 1 of a general election year and ending with the deadline to submit applications for certification, the commission shall post on its website a monthly report stating, by district:

- (1) The number of declarations of intent to seek comprehensive public funding received;
- (2) The number of applications for certification received;
- (3) The number of candidates who have been certified for comprehensive public funding;
- (4) The amount of public funding committed to certified candidates; and
- (5) The amount of public funding available for additional certified candidates.

Notwithstanding any other provisions in this part, if the commission determines that the revenues are insufficient to meet distributions to certified candidates under this section or \$300,000 is distributed, the commission shall permit certified candidates to accept and spend contributions, subject to the campaign contribution limitations set forth in section 11-204, Hawaii Revised Statutes, up to the applicable amounts, including equalizing funds the certified candidate would have received from comprehensive public funding.

(c) For primary elections subject to this part, the base amount of public funding shall be the average of the amount spent by the winning candidates in the previous two county council primary elections of the same district, reduced by ten per cent.

(d) For general elections subject to this part, the base amount of public funding shall be the average of the amount spent by the winning candidates in the previous two county council general elections for the same district, reduced by ten per cent.

(e) The base amount of public funding for a primary election in which no other candidate has filed nomination papers shall be thirty per cent of the amount provided in a contested election as determined under subsection (c). No funding shall be allocated in an uncontested general election.

(f) Public funds, including equalizing funds, shall be paid to a certified candidate by the comptroller in the manner prescribed in section 11-222, Hawaii Revised Statutes.

(g) If the winning primary candidate has residual funds from the primary election, those funds may be carried over to the general election provided that a winning primary candidate who does not have an opponent in the general election

shall return all unexpended public funds to the Hawaii campaign election fund within thirty days after the primary election except as provided in section 11(b).

(h) A certified candidate who is not successful in the election shall return all unexpended public funds to the Hawaii election campaign fund within thirty days after the election in which the candidate was not successful.

**SECTION 13. Equalizing funds; sufficiency of funds.** (a) Equalizing funds, subject to the expenditure cap in section 12(a), shall be disbursed in the amounts provided in this section to a certified candidate in a contested election whenever that candidate is outspent by an opposing nonparticipating candidate.

(b) An opposing nonparticipating candidate is deemed to have outspent a certified candidate when the campaign report filed pursuant to this subpart shows that the nonparticipating candidate's committee's expenditures or contributions, whichever is greater, added to any independent expenditures made in support of that nonparticipating candidate or against the opposing certified candidate reported by any person, minus any independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person exceeds one hundred per cent of the base amount for the certified candidate.

(c) In a contested election, the aggregate amount of equalizing funds shall be limited to an amount equal to the base amount allotted to the certified candidate regardless of the amount of contributions received or expenditures made by an opposing nonparticipating candidate; independent expenditures made in support of that nonparticipating candidate or against the opposing certified candidate; or the failure to file an excess report on or before the due date by the nonparticipating candidate or filing of a false excess report.

Twenty-five per cent of the base amount shall be paid to the certified participating candidate in the manner prescribed in section 11-222, Hawaii Revised Statutes, if the commission determines that the nonparticipating candidate's committee's expenditures or contributions, whichever is greater, added to any independent expenditures made in support of that nonparticipating candidate or against the opposing certified candidate reported by any person, minus any independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person:

- (1) Exceeds one hundred per cent but is less than one hundred twenty five per cent;
- (2) Is equal to or exceeds one hundred twenty five per cent but is less than one hundred fifty per cent;
- (3) Is equal to or exceeds one hundred fifty per cent but is less than one hundred seventy five per cent; or
- (4) Is equal to or exceeds one hundred seventy five per cent

of the certified candidate's base amount.

**SECTION 14. Reporting; public funds if report not filed by nonparticipating candidate; penalties for failure to report.** (a) Reporting obligations under this section for nonparticipating candidates and their candidate's committees or any other persons making independent expenditures shall be in addition to the reporting requirements under this part and chapter 11, Hawaii Revised Statutes, whenever a certified candidate is opposed in a contested election by a nonparticipating candidate as follows:

- (1) Beginning forty-five days before the primary election day, nonparticipating candidates and their candidate's committees shall file an initial excess report with the commission within twenty-four hours after aggregate contributions are received, or expenditures are made in an election that exceeds one hundred one per cent of the base amount of compre-



hensive public funding allotted to an opposing certified candidate in a contested election. Nonparticipating candidates and the candidate's committees shall file supplemental excess reports within twenty-four hours after the committees' aggregate expenditures exceed \$1,000 since the filing of the prior report; and

- (2) Beginning forty-five days before the general election day, noncandidate committees and any other persons that make independent expenditures that expressly advocate the nomination, election, or defeat of a certified candidate shall file the initial independent expenditure report with the commission within twenty four hours after expenditures exceed \$1,000 in aggregate in an election. Noncandidate committees and any other persons that incur independent expenditures shall file supplemental independent expenditure reports within twenty-four hours after the aggregate expenditures exceed \$1,000 since the filing of the prior report. The independent expenditure reports shall identify the nonparticipating candidate or certified candidate for whom the independent expenditure is intended to influence the nomination, election, or defeat.

(b) If a nonparticipating candidate and the candidate's committee fails to file the initial excess report or supplemental excess report in a contested election on or before the due date as required by this section or files a false excess report or supplemental excess reports, the commission, within twenty-four hours of verifying the failure or falsity, shall inform the comptroller. The entire base amount subject to the expenditure cap in section 12(a) and equalizing funds cap in section 13(c) shall be paid to a certified candidate by the comptroller in the manner prescribed in section 11-222, Hawaii Revised Statutes.

(c) Any nonparticipating candidate and the candidate's committee, or any other person that makes independent expenditures in a contested election involving a certified candidate and that fails to file a report as required under this part shall be subject to a fine pursuant to section 11-\_\_\_\_\_, Hawaii Revised Statutes.

(d) Any nonparticipating candidate and the candidate's committee, or any other person that makes independent expenditures in a contested election involving a certified candidate and that files a false report as required under this part shall be subject to:

- (1) Any penalty pursuant to section 11-228, Hawaii Revised Statutes; and
- (2) Prosecution pursuant to section 11-229, Hawaii Revised Statutes, and any provision of the Hawaii Penal Code.

**SECTION 15. Comprehensive public funding; permitted uses.** (a) Comprehensive public funds shall be used only for the purpose of defraying expenses directly related to the certified candidate's campaign during the election campaign period for which the comprehensive public funds are allocated.

(b) A candidate receiving funds under this part or the candidate's campaign treasurer shall not transfer any portion of the funds provided under this part to any other candidate for another campaign.

**SECTION 16. Deposit of, and access to, comprehensive public funds.** (a) All public funds and seed money received by a certified candidate shall be deposited directly into a depository institution as provided under section 11-199(a), Hawaii Revised Statutes, and accessed through use of debit cards and bank checks. No expenditures of any public funds received under this subpart shall be made except by debit cards or checks drawn on such checking account.

(b) All reports required under subpart B of part XII of chapter 11, Hawaii Revised Statutes, and this part for financial disclosure shall include the most recent,

available bank statement from the financial depository holding the public funds, as attested to by the candidate's committee.

**SECTION 17. Deposit of money into the Hawaii election campaign fund.**

The following moneys shall be deposited into the Hawaii election campaign fund established under section 11-217, Hawaii Revised Statutes:

- (1) Appropriations from the legislature;
- (2) Excess seed money contributions;
- (3) Qualifying contributions, including any excess qualifying contributions of certified candidates;
- (4) Unspent public funds distributed to any certified candidate;
- (5) Fines levied by the commission for violation of this part; and
- (6) Voluntary donations.

**SECTION 18. Violations; penalties.** Any candidate who knowingly seeks or receives public funding to fraudulently qualify for or receive public funding shall:

- (1) Have the candidate's certification for comprehensive public funding revoked. Upon revocation of certification, the certified candidate shall repay all public funds received within ten business days to the Hawaii election campaign fund; and
- (2) Be subject to fines and penalties as specifically provided in this part and other fines or penalties pursuant to sections 11-228 and 11-229, Hawaii Revised Statutes, and the Hawaii Penal Code.

**SECTION 19.** (a) This part shall be a pilot project limited to the elections of 2010, 2012, and 2014 for the county of Hawaii county council elections only.

(b) No candidate who is certified for comprehensive public funding under this part in any of the elections of 2010, 2012, and 2014 shall become eligible for partial public funding in the election for which the candidate qualifies for comprehensive public funding; provided that comprehensive public funding as provided for in this part is practicable according to the terms of Section 3.

(c) Seed money and qualifying contributions received by a candidate shall be included in the aggregate contributions of individuals for purposes of section 11-204, Hawaii Revised Statutes, if:

- (1) A candidate who is not certified for comprehensive public funding subsequently seeks election as a privately funded candidate in the same election for which the candidate was not certified; or
- (2) The commission determines, pursuant to section 12(b), that revenues are insufficient to meet distributions to certified candidates.

**SECTION 20.** The campaign spending commission shall create and publish all forms and receipts required as well as a candidates' guide to the comprehensive public funding program that shall include an explanation of rules and procedures applicable to candidates.

**SECTION 21.** Section 11-217.5, Hawaii Revised Statutes, is amended to read as follows:

**“§11-217.5 Depletion of fund.** (a) The Hawaii election campaign fund shall be under no obligation to provide moneys to ~~[qualified]~~ eligible candidates ~~[in the event that]~~ if, in the partial public funding program or comprehensive public funding for elections to the county of Hawaii council, moneys in that fund ~~[have been depleted.]~~ are near depletion.

(b) ~~[In the event that]~~ For purposes of the partial funding program, if the Hawaii election campaign fund is close to depletion, as determined by the commission, the commission shall determine the amounts available to [qualified] eligible candidates based on their order of eligibility in qualifying for partial public funds, as determined by the date of filing of an application for public funds with the commission pursuant to section 11-222; provided that the application has been accepted by the commission.

(c) For the purposes of the comprehensive public funding for elections to the county councils, if the Hawaii election campaign fund is close to depletion, the commission shall determine whether that program shall be operative in accordance with subpart .”

SECTION 22. If any provisions in this part conflict with or are otherwise inconsistent with any statutory provision of part XII of chapter 11, Hawaii Revised Statutes, this part shall supersede any such conflicting or inconsistent statutory provisions for the purposes of this part.

## PART II

SECTION 23. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to part XII, subpart B, to be appropriately designated and to read as follows:

**“§11- Failure to file report; filing a substantially defective or deficient report.** (a) True and accurate reports shall be filed with the commission on or before the due date specified in this subpart. Any committee that is required to file reports under this subpart shall be subject to the penalties in this section if the report is not filed by the due date or if the report is substantially defective or deficient, as determined by the commission.

(b) The penalty for not filing a report by the due date shall be \$50 per day for the first seven days, beginning with the day after the due date of the report, and \$200 per day thereafter, not to exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; provided that the minimum penalty for a report filed more than four days after the due date shall be \$200.

(c) Subsection (b) notwithstanding, if a candidate’s committee does not file the second preliminary primary report or the preliminary general report or if a noncandidate committee does not file the preliminary primary report or the preliminary general report by the due date, the fine shall be \$300 per day, not to exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; provided that the minimum penalty shall be \$300.

(d) If the commission determines that a report is substantially defective or deficient, the commission shall notify the candidate’s committee by first class mail that:

- (1) The report is substantially defective or deficient; and
- (2) A penalty may be assessed.

(e) If the corrected report is not filed with the commission’s electronic filing system on or before the fourteenth day after the notice of deficiency has been mailed, the penalty for a substantially defective or deficient report shall be \$50 per day for the first seven days, beginning with the fifteenth day after the notice was sent, and \$200 per day thereafter, not to exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the

report; provided that the minimum penalty for not filing a corrected report more than eighteen days after the notice was sent shall be \$200.

(f) The commission shall publish on its website the names of all candidate's committees that have failed to file a report or to correct a report within the time allowed by the commission.

(g) All penalties collected under this section shall be deposited into the general fund."

SECTION 24. Section 11-191, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "loan" to read:

"“Loan” means an advance of money, goods, or services, with a promise to repay in full or in part within a specified period of time. A “loan” does not include expenditures made on behalf of a committee by a candidate, volunteer, or employee if:

- (1) A candidate, volunteer, or employee’s aggregate expenditures do not exceed \$1,500 within a thirty day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the committee before the committee reimburses the candidate, volunteer, or employee; and
- (3) The committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditure being made.”

2. By amending the definition of "person" to read:

"“Person” means an individual, partnership, committee, association, corporation, business entity, organization, or labor union and its auxiliary committees."

SECTION 25. Section 11-193, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The duties of the commission under this subpart are:

- (1) To develop and adopt reporting forms required by this subpart;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
- (5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained, and that a penalty may be assessed.<sup>1</sup> [The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to these persons. The commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure

~~to respond after a newspaper notification or website publication shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected.~~<sup>2</sup> All penalties collected under this section shall be deposited in the [~~Hawaii election campaign fund;~~] general fund of the State;

- (6) To hold public hearings;
- (7) To investigate and hold hearings for receiving evidence of any violations;
- (8) To adopt a code of fair campaign practices as a part of its rules;
- (9) To establish rules pursuant to chapter 91;
- (10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
- (11) To administer and monitor the distribution of public funds under this subpart;
- (12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
- (13) To employ or contract, without regard to chapters 76, 78, and 89 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
- (14) To do random audits, field investigations, as necessary;
- (15) To file for injunctive relief when indicated; and
- (16) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion. Nothing in this section shall be construed to allow the commission to issue rules through an advisory opinion."

SECTION 26. Section 11-195, Hawaii Revised Statutes, is amended to read as follows:

**"§11-195 Filing of reports, generally.** (a) All reports required to be filed under this subpart by a [~~candidate or those committees directly associated with the candidate's candidacy~~] candidate's committee shall be certified by the candidate and treasurer. Reports required to be filed under this subpart by a [~~party or committee that supports more than one candidate~~] noncandidate committee shall be certified by [~~a person authorized to sign the reports. All reports required to be filed under this subpart shall be open for public inspection in the office of the commission.~~] the chairperson and treasurer.

(b) [~~The original and one copy of all~~] All reports required under this subpart shall be electronically filed [~~at the office of the commission. In the case of counties having less than two hundred thousand voters, the filing shall be accomplished~~

by filing an original and two copies of the required report with either the commission or the clerk of the county in which the candidate resides. The clerk shall then immediately mail the original and one copy of the report to the commission.

(e) ~~The commission or county clerk shall give each person filing a report a receipt stating the type of report filed and the date and time of filing.~~

(d) ~~All reports filed with the county clerk's office shall be preserved by that office for four years from the date of receipt.] on the commission's electronic filing system.~~

~~[(e)] (c)~~ All reports required to be filed under this subpart shall at all times be available to the general public.

~~[(f)] (d)~~ For purposes of this subpart, whenever a report is required to be filed with the commission, "filed" means ~~[received in the office of the commission or county clerk, whichever is applicable,]~~ electronically filed on the commission's electronic filing system by the date and time specified for the filing of the report~~;~~ except that a noncandidate committee required to be registered with the commission pursuant to section 11-194(d), and a candidate] by the:

(1) Candidate or the committee of a candidate who is seeking election to the:

- ~~[(1)] (A)~~ Office of governor;
- ~~[(2)] (B)~~ Office of lieutenant governor;
- ~~[(3)] (C)~~ Office of mayor;
- ~~[(4)] (D)~~ Office of prosecuting attorney;
- ~~[(5)] (E)~~ County council;
- ~~[(6)] (F)~~ Senate;
- ~~[(7)] (G)~~ House of representatives;
- ~~[(8)] (H)~~ Office of Hawaiian affairs; or
- ~~[(9)] (I)~~ Board of education~~;~~

~~shall file by electronic means in the manner prescribed by the commission.]; or~~

(2) Noncandidate committee required to be registered with the commission pursuant to section 11-194.

(e) In order to be timely filed, a committee's reports shall be filed on the commission's electronic filing system on or before 11:59 p.m. Hawaii standard time on the prescribed filing date."

SECTION 27. Section 11-205.6, Hawaii Revised Statutes, is amended to read as follows:

**"§11-205.6 Campaign contributions; loans.** (a) Any loan to a candidate or candidate's committee in excess of \$100 shall be documented and disclosed as to lender, including the lender's name, address, employer, and occupation and purpose of the loan in the subsequent report to the commission. A copy of the executed loan document shall accompany the report. The document shall contain the terms of the loan, including the interest and repayment schedule. Failure to document the loan or to disclose the loan to the commission shall cause the loan to be treated as a campaign contribution, subject to all relevant provisions of this chapter.

(b) A candidate or candidate's committee may receive and accept loans in an aggregate amount not to exceed \$10,000 during an election period, provided that if the \$10,000 limit is reached, the candidate or candidate's committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full by the candidate or candidate's committee.

(c) If any loan made to a candidate is not repaid within one year of the date that the loan is made, the candidate and candidate's committee shall be prohibited from accepting any other loans, and all subsequent contributions received and any

surplus retained shall only be expended toward the repayment of the outstanding loan, until the loan is repaid in full by the candidate or candidate's committee.

(d) No loan may be accepted or made by noncandidate committees.

(e) Any loan by a financial institution regulated by the State or a federally chartered depository institution and made in accordance with applicable law in the ordinary course of business, or a loan by a candidate of the candidate's own funds, or a loan from immediate family members of a candidate using their own funds to the candidate's committee shall not be deemed a contribution and not subject to the contribution limits provided in section 11-204 or the loan limit and repayment provisions of subsection (b) and (c); provided that loans from the immediate family members of the candidate shall remain subject to the provisions in section 11-204(c).

(f) For the purposes of this section, a "loan" does not include expenditures made on behalf of a candidate committee by a candidate, volunteer, or employee if:

- (1) The candidate's, volunteer's, or employee's aggregate expenditures do not exceed \$1,500 within a thirty-day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the candidate committee before the candidate committee reimburses the candidate, volunteer, or employee; and
- (3) The candidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditure being made."

SECTION 28. Section 11-206, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Surplus funds may be used after a general or special election for:

- (1) Any fundraising activity;
- (2) Any other politically related activity sponsored by the candidate;
- (3) Any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office; or
- (4) Any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election cycle, the total amount of all contributions from ~~[campaign funds and]~~ surplus funds shall be no more than twice the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a); provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election."

SECTION 29. Section 11-207.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each candidate, candidate's committee, or committee, that within the period of fourteen calendar days through four calendar days prior to a primary, special primary, general, or special general election, makes contributions aggregating more than \$500, or receives contributions from any person or entity aggregating more than \$500, shall file a report with the commission ~~[or appropriate county clerk's office on forms provided by the commission, no later than 4:30 p.m.,]~~ three calendar days prior to the election."

SECTION 30. Section 11-212, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

- "(a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report ~~[with the commission or appropriate county clerk's office].~~ Pre-

liminary reports shall be filed ~~[on forms provided by the commission no later than 4:30 p.m.]~~ on the following dates:

- (A) July thirty-first of the year of the primary election;
  - (B) Ten calendar days prior to each primary and initial special election; and
  - (C) Ten calendar days prior to a special or general election.
- (2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through June 30 prior to the filing of the report filed on the thirty-first of July and fifth calendar day prior to the filing of other preliminary reports:
- (A) The aggregate sum of all contributions and other campaign receipts received;
  - (B) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
  - (C) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
  - (D) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and
  - (E) A current statement of the balance on hand or deficit.

(b) Each noncandidate committee shall file a preliminary report with the commission ~~[, on forms provided by the commission, no later than 4:30 p.m.]~~ on the tenth calendar day prior to each primary election and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:

- (1) The aggregate sum of all contributions and other campaign receipts received;
  - (2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
  - (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
  - (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
  - (5) A current statement of the balance on hand.”
2. By amending subsection (d) to read:

“(d) A candidate, party, or committee whose aggregate contributions and aggregate expenditures for the reporting period each total \$2,000 or less may file a short form report with the commission ~~[or appropriate county clerk’s office]~~ in lieu of the reports required by this section and section 11-213.”



SECTION 31. Section 11-213, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission [~~on forms provided by the commission no later than 4:30 p.m.~~] on the twentieth calendar day after a primary or initial special election. The report shall include the following information which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (4) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (5) The cash balance and a statement of surplus or deficit.

(b) Each noncandidate committee shall file a final primary report, certified pursuant to section 11-195, [~~with the commission on forms provided by the commission no later than 4:30 p.m.~~] on the twentieth calendar day after a primary election. The report shall include the following information, which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of more than \$100 during an election, which has not previously been reported;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.”

2. By amending subsection (d) to read:

“(d) General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period [~~general~~] report with the commission on forms provided by the commission [~~no later than 4:30 p.m.~~] on the thirtieth calendar day after a general, special general, or special election. The final election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report.”

3. By amending subsections (f) and (g) to read:

“(f) Deficit. In the event of a deficit the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports covering all items prescribed in subsection (a) or subsection (b) in the case of noncandidate committees. The first report shall be due no later than ~~[4:30 p.m. on]~~ the thirty-first day after the last day of the election year.

(g) Surplus. In the event of a surplus the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall:

- (1) Maintain the cash surplus in a financial depository; and
- (2) Every six months, until the candidate files to be on the ballot with the state office of elections, or in the case of a party or committee until they participate in an election again, file supplemental reports detailing all items prescribed in subsection (a) or in the case of a noncandidate committee until they participate in an election again, or file supplemental reports detailing all items prescribed in subsection (b).

The first report shall be due not later than ~~[4:30 p.m. on]~~ the thirty-first calendar day after the last day of the election year.”

SECTION 32. Section 11-216, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) If the commission renders a final determination of violation, its written decision with findings of fact and conclusions of law may also provide, without limitation the following orders:

- (1) The return of any contribution;
- (2) The reimbursement of any unauthorized expenditure;
- (3) The payment of any administrative fine payable to the ~~[Hawaii election campaign fund;]~~ general fund of the State;
- (4) Cease and desist violation of this subpart; or
- (5) File any report, statement, or other information as required by this subpart.”

SECTION 33. Section 11-228, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any administrative fine collected by the commission shall be deposited ~~[in the Hawaii election campaign fund.]~~ into the general fund of the State of Hawaii.”

SECTION 34. Section 235-102.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any individual whose state income tax liability for any taxable year is ~~[\$2]~~ \$3 or more may designate ~~[\$2]~~ \$3 of the liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department. In the case of a joint return of a husband and wife having a state income tax liability of ~~[\$4]~~ \$6 or more, each spouse may designate that ~~[\$2]~~ \$3 be paid to the fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. An explanation shall be included which clearly states that the check-off does not constitute an additional tax liability. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made whether by an original or amended return may not be revoked.”

### PART III

SECTION 35. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>3</sup>

**SECTION 36.** If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 37.** This Act shall take effect upon its approval; provided that part I shall take effect on July 1, 2008, and shall be applicable beginning with the general election year of 2010. This part and part II shall take effect upon their approval.

(Became law on July 8, 2008, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Notes**

1. Period should not be underscored.
2. No end bracket.
3. Edited pursuant to HRS §23G-16.5.

# PROPOSED CONSTITUTIONAL AMENDMENT

## S.B. NO. 966

A Bill for an Act Proposing an Amendment to Article V, Section 1, of the Hawaii Constitution, to Change the Age Qualification for the Offices of Governor and Lieutenant Governor from the Age of Thirty Years to the Age of Twenty-Five Years.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that amending the Constitution of the State of Hawaii to allow Hawaii residents, twenty-five years and older, to be a candidate for and hold the office of governor or lieutenant governor will inspire Hawaii's young people to participate in the leadership process. There are many outstanding, qualified, and experienced candidates under thirty who are unable to run for the office of governor or lieutenant governor because of the current arbitrary age restriction of thirty years.

While there are many successful entrepreneurs, military leaders, and elected officials who are under the age of thirty, young people are generally more disillusioned with government, and feel they are excluded and are not a part of the process. Lowering the age to twenty-five for Hawaii's top elected officials will inspire young people, who will realize the door is open and the opportunity is there for them to represent our state as governor or lieutenant governor.

The legislature further finds that a twenty-five year old, according to the United States Constitution, is qualified to run for and be elected to Congress, and therefore has the power to declare war, sending hundreds of thousands of American sons and daughters into combat, risking their lives. Thousands of Hawaii soldiers of all ages recently returned from Iraq, and many of these returning veterans are young people who feel inspired from the experience to serve Hawaii in a leadership position.

The purpose of this Act is to propose an amendment to article V, section 1, of the Constitution of the State of Hawaii to reduce the age qualification for the office of governor from thirty years to twenty-five years. This amendment will also reduce the age for the lieutenant governor, as the qualifications are the same for both offices, as stated in article V, section 2.

SECTION 2. Article V, section 1, of the Constitution of the State of Hawaii is amended to read as follows:

### “THE EXECUTIVE

#### ESTABLISHMENT OF THE EXECUTIVE

**Section 1.** The executive power of the State shall be vested in a governor. The governor shall be elected by the qualified voters of this State at a general election. The person receiving the highest number of votes shall be the governor. In case of a tie vote, the selection of the governor shall be determined as provided by law.

The term of office of the governor shall begin at noon on the first Monday in December next following the governor's election and end at noon on the first Monday in December, four years thereafter.

No person shall be elected to the office of governor for more than two consecutive full terms.

## PROPOSED CONSTITUTIONAL AMENDMENT

No person shall be eligible for the office of governor unless the person shall be a qualified voter, have attained the age of [~~thirty~~] twenty-five years and have been a resident of this State for five years immediately preceding the person's election.

The governor shall not hold any other office or employment of profit under the State or the United States during the governor's term of office."

SECTION 3. The question to be printed on the ballot shall be as follows:  
"Shall the age qualification for the office of governor and office of lieutenant governor be reduced from thirty years of age to twenty-five years of age?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

**SPECIAL SESSION OF 2008**

**Session Laws of Hawaii  
Passed By The  
Twenty-Fourth State Legislature  
Special Session  
2008**

**ACT 1**

H.B. NO. 2250

A Bill for an Act Relating to Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that air transportation is uniquely important to the people of the State of Hawaii. The construction of surface transportation systems linking the various islands of Hawaii on the comprehensive basis that prevails elsewhere in the United States is impractical. Accordingly, the people of the State of Hawaii must rely extensively on air travel for their basic daily personal transportation needs and for the shipment of goods that are important to their daily lives. Similarly, visitors to the State must often rely on local air travel services provided by Hawaii air carriers for transportation among the various islands. This makes reliable air transportation among the islands of the State vital to the growth of the statewide tourism industry.

The legislature finds that these concerns can best be addressed by the regulation of air services between points in the State of Hawaii at the state level. The legislature finds that the current policies adopted at the national level may be inappropriate to the unique environment of Hawaii interisland and local service and, further, that policies adopted by the State of Hawaii in the regulation of this service will not impair implementation of national regulatory goals, including safety regulation, which shall remain exclusively within the jurisdiction of the Federal Aviation Administration.

Accordingly, the purpose of this Act is to establish a statutory scheme for state regulation of interisland air carriers, to the extent permissible under the Constitution and laws of the United States.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
HAWAII AIR CARRIERS**

**§ -1 Application of chapter; interstate or foreign commerce.** This chapter shall not apply to commerce with foreign nations, with territories of the United States, or to interstate commerce, except insofar as the application is permitted under the Constitution and laws of the United States.

**§ -2 Definitions.** As used in this chapter:

“Air transportation” means the holding out to the general public of or the undertaking to provide the carriage of persons or property, except for United States mail, by air, for compensation or hire between any pair of points, both of which are within the State of Hawaii, unless the carriage is part of the continuous carriage of the persons or property to or from a point outside the State of Hawaii. For the purposes of this chapter the term “continuous carriage” means transportation by air which does not include a stopover of more than twenty-four hours.

“Aircraft” means any craft or other artificial contrivance of whatever description that is used or capable of being used, or intended to be used, as a means of transportation by air.

“Certificate” means a certificate of public convenience and necessity issued under this chapter to a Hawaii air carrier.

“Commission” means the air carrier commission established pursuant to section -4.

“Control,” in reference to a relationship between any person or persons and another person or persons, includes actual as well as legal control, indirect as well as direct control, and the power to exercise substantial influence whether or not exercised.

“Hawaii air carrier” or “carrier” means any person or entity who has received a certificate issued by the commission and who undertakes or holds itself out to the general public as engaging directly or indirectly in the transportation by air of passengers or property, or both, for compensation or hire within the State or between points within the state.

“Rates” includes rates, fares, and charges of whatever kind and nature unless the context indicates otherwise.

“Related company” means a company or persons that directly, or indirectly through one or more subsidiaries, affiliates, or a holding company, controls or is controlled by, or is under common control with, a Hawaii air carrier.

“Transportation of persons” includes every service in connection with or incidental to the comfort or convenience of persons transported and the receipt, carriage, and delivery of these persons and their baggage.

“Transportation of property” includes every service in connection with or incidental to the transportation of property, including in particular its receipt, carriage, preservation, and delivery, and all incidental services affecting these activities.

**§ -3 Exemptions; generally.** Notwithstanding any other provisions of this chapter, this chapter shall not apply to:

- (1) Persons transporting their own property where the transportation is in furtherance of a primary business purpose or enterprise of that person, except where the transportation is undertaken by a Hawaii air carrier to evade the regulatory purposes of this chapter; or
- (2) Persons engaged in the business of transporting persons solely for sight-seeing and other recreational activities not involving point-to-point travel.

**§ -4 Air carrier commission; establishment.** (a) There is established an air carrier commission to assist in the regulation of interisland air carriers pursuant to the purposes of this chapter. The commission shall be placed with the department of transportation for administrative purposes.

(b) The commission shall consist of five members. The commission shall be appointed in the manner prescribed in section 26-34, except as otherwise provided in this section. The members shall be appointed for terms of six years each, subject to the advice and consent of the senate. The terms of the members initially appointed



shall be for two, three, four, five, and six years, respectively, as designated by the governor at the time of appointment. The governor shall designate a member of the commission to be chairperson of the commission. Each member shall hold office until the member's successor is appointed and qualified.

(c) In appointing members, the governor shall consider persons who have experience in transportation, accounting, engineering, government, finance, law, or other similar fields. No person owning any stock or bonds of any Hawaii air carrier or of any common carrier by air, or having any interest in, or deriving any remuneration from, any Hawaii air carrier or any common carrier by air shall be appointed as a commissioner; provided that any person who has retired from the service of, and no longer holds any position with, any common carrier or Hawaii air carrier may be eligible for appointment.

(d) The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses, including travel expenses, incurred in the performance of their duties.

§ -5 **Staff.** The air carrier commission may appoint and employ, on a contractual or noncontractual basis not subject to chapter 76, persons the commission determines necessary for the performance of the commission's functions. The commission shall determine the powers, duties, and compensation of the staff.

§ -6 **General powers and duties.** The air carrier commission shall have general supervision over all Hawaii air carriers providing air transportation and, to the extent determined by the commission to be necessary to effectuate the purposes of this chapter, over any related company, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter. The general powers of the commission shall include:

- (1) Regulating Hawaii air carriers by using, in addition to its other powers, the investigative powers set forth in section -7;
- (2) Establishing reasonable classifications of Hawaii air carriers based upon the nature of the services provided by the carriers and adopting rules pursuant to chapter 91 to regulate those classes of Hawaii air carriers; and
- (3) Exempting from this chapter, in whole or in part, when determined to be in the public interest, any Hawaii air carrier engaging in air transportation solely with aircraft with a maximum seating capacity of not more than seventeen passengers or maximum cargo capacity of not more than three thousand pounds.

§ -7 **Investigative powers.** (a) The air carrier commission shall have the power to examine the condition of each Hawaii air carrier and, to the extent determined by the commission to be necessary to effectuate the purposes of this chapter, any related companies, including:

- (1) The manner in which carriers are operated with reference to the accommodation of the public;
- (2) The fares and rates charged by carriers;
- (3) The value of the physical property of carriers;
- (4) The issuance of stocks and bonds, and the disposition of the proceeds thereof, by carriers;
- (5) The amount and disposition of the income and all financial transactions, of carriers;
- (6) The business relations of carriers with other persons, companies, or corporations;

- (7) The compliance of carriers with all applicable state and federal laws and with the provisions of their franchise, charter, and articles of association, if any;
- (8) The classifications, rules, regulations, practices, and service of carriers; and
- (9) All matters of every nature affecting the relations and transactions between carriers and the public, persons, or corporations.

(b) Any investigation may be made by the commission on its own motion or a sworn written complaint that the commission determines sets forth any prima facie cause of complaint.

(c) A related company shall be deemed to have consented to examination and investigation pursuant to this section by entering into or maintaining a control relationship with a Hawaii air carrier.

**§ -8 Certificates of public convenience and necessity.** (a) Except as otherwise provided in this chapter, no person shall engage in air transportation unless the person holds a certificate issued by the air carrier commission authorizing its operation.

(b) Applications for certificates shall be made in writing to the commission. Applications shall be in the proper form and contain the required information, with the proof of service upon the interested parties, as the commission shall require by rule.

(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application if it is found that the applicant is a citizen of the United States and fit, willing, and able to properly perform the service proposed and to conform to this chapter and the requirements and rules of the commission, and that the proposed service, to the extent to be authorized by the certificate, is required by the public convenience and necessity; otherwise the application shall be denied. The applicant shall have the burden of proof to establish that any proposed service is required by the public convenience and necessity. The commission shall institute an oral evidentiary hearing to consider any application for a certificate that would authorize the holder to use aircraft capable of carrying more than seventeen passengers.

(d) Any applicant receiving a certificate under this chapter shall pay, upon receipt of the certificate, a registration fee and subsequent annual fee that shall be determined by the commission and deposited into the state general fund.

(e) Any Hawaii air carrier engaging in air transportation under a certificate issued by the commission may occasionally deviate from the route over which it is authorized to operate under the certificate under rules adopted by the commission.

**§ -9 Temporary authority.** To enable the provision of service for which there is an immediate and urgent need to a point or points having no Hawaii air carrier service capable of and willing to meet the need, the air carrier commission, in its discretion and without hearings or other proceedings, may grant temporary authority for the service by a Hawaii air carrier. The temporary authority, unless suspended or revoked for good cause, shall be valid for the time the commission shall specify, but for not more than a period of one hundred twenty days for any one immediate and urgent need.

**§ -10 Transfer of certificates of public convenience and necessity; carrier property; control of carriers.** (a) No Hawaii air carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber any certificate, in whole or in part, or any of its property necessary or useful in the performance of transportation services for the public; nor shall any Hawaii air carrier, by any means, directly or indirectly,

merge or consolidate its property, certificates, or any part thereof, with any other carrier, without in each case first having secured from the air carrier commission an order authorizing it to do so, and every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with an order of the commission authorizing the same, shall be void and of no effect.

(b) No Hawaii air carrier shall purchase or acquire, take, or hold any part of the capital stock of any other common carrier without having been first authorized to do so by the commission. Every assignment or transfer of any stock by or through any person to any person, or otherwise, in violation of this section shall be void and of no effect, and no such transfer shall be made on the books of any air carrier. Nothing in this subsection shall prevent the holding of stock lawfully acquired prior to the effective date of this chapter.

(c) No person shall acquire control of any Hawaii air carrier without first receiving the approval of the commission.

(d) Whenever a transaction is proposed under subsection (a), (b), or (c), the Hawaii air carrier or carriers, or person or persons, seeking approval shall present an application to the commission in the form prescribed by the commission. The commission may act upon the application with or without first holding a public hearing; provided that, if requested, the commission shall afford reasonable opportunity for interested parties to be heard. If the commission finds, subject to the terms and conditions that it determines to be just and reasonable, that the proposed transaction will be consistent with the public interest, the commission shall enter an order approving and authorizing the transaction, upon the terms and conditions and with the modifications found to be just and reasonable. The proponent of the transaction within the scope of subsection (a), (b), or (c) shall have the burden of proof to establish that the transaction is consistent with the public interest.

(e) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more Hawaii air carriers, or of a purchase, lease, charter, or contract to operate the properties of one or more Hawaii air carriers, or of an acquisition of control of a Hawaii air carrier, the commission, in its discretion and without hearings or other proceedings, may grant temporary approval for a period not exceeding one hundred twenty days, or for an additional period as the determination of an application may require, of the operation of the Hawaii air carrier properties sought to be acquired by the persons proposing in the pending application to acquire the properties, if it appears that failure to grant this temporary approval may result in destruction of or injury to the Hawaii air carrier properties sought to be acquired or substantial interference with their future usefulness in the performance of adequate and continuous service to the public.

(f) This section shall apply to any transaction entered into or proposed to be entered into by a related company that is determined by the commission to have potential impact upon the related Hawaii air carrier or its operations. A related company shall notify the commission of any such transaction at least sixty days prior to its consummation.

**§ -11 Suspension, change, and revocation of certificates.** (a) Certificates shall be effective from the date specified and shall remain in effect until suspended or terminated as provided in this section.

(b) Any certificate, upon application of the certificate holder, in the discretion of the air carrier commission, may be amended or revoked in whole or in part. Upon complaint, or on the commission's own initiative, a certificate may be suspended, changed, or revoked in whole or in part for wilful failure by the holder or any related company to comply with this chapter, or with any lawful order or rule of the commission, or with any term, condition, or limitation of the certificate. No certificate shall be revoked except upon application of the holder unless the certificate holder or any

related company wilfully fails to comply, within a reasonable time that shall not be fewer than thirty days and that shall be fixed by the commission, with a lawful order of the commission, rule of the commission, or to a term, condition, or limitation of the certificate or permit.

(c) The right to engage in transportation by virtue of any certificate issued pursuant to section -8 or by virtue of temporary authority or approval granted under section -9 or -10, may be suspended by the commission upon reasonable notice of not fewer than fifteen days to the carrier, but without hearing or other proceedings, for failure to comply by the carrier or any related company, with the terms of the certificate or temporary authority or approval or with any lawful order or rule of the commission regarding the certificate or temporary authority or approval.

**§ -12 Rates, fares, and other charges of air carriers.** (a) In the transportation of passengers, every Hawaii air carrier shall:

- (1) Provide safe and adequate service, equipment, and facilities for the transportation of the passengers; and
- (2) Establish, observe, and enforce just and reasonable:
  - (A) Rates, fares, and charges;
  - (B) Regulations and practices relating to rates, fares, and charges; and
  - (C) Regulations and practices relating to:
    - (i) The issuance, form, and substance of tickets;
    - (ii) The carrying of personal, sample, and excess baggage;
    - (iii) The facilities for transportation; and
    - (iv) All other matters relating to or connected with the transportation of passengers as determined by the commission.

(b) In the transportation of property, every Hawaii air carrier shall:

- (1) Provide safe and adequate service, equipment, and facilities for the transportation of the property; and
- (2) Establish, observe, and enforce just and reasonable:
  - (A) Rates, charges, and classifications;
  - (B) Regulations and practices relating to rates, charges, and classifications; and
  - (C) Regulations and practices relating to:
    - (i) The manner and method of presenting, marking, packing, and delivering property for transportation;
    - (ii) The facilities for transportation; and
    - (iii) All other matters relating to or connected with the transportation of property as determined by the commission.

(c) All charges made for any service rendered by any Hawaii air carrier in the transportation of passengers or property or in connection with the service shall be just and reasonable and every unjust and unreasonable charge for the service or any part thereof shall be prohibited and declared to be unlawful.

(d) Any person or body politic may make a complaint in writing to the commission that any rate, fare, charge, rule, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission determines that any individual rate, fare, or charge, demanded, charged, or collected by any Hawaii air carrier, or any rule or practice whatsoever of the Hawaii air carrier affecting the rate, fare, or charge or the value of the service is or will be unjust or unreasonable, the commission shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum rate, fare, or charge thereafter to be observed, or the lawful rule or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by Hawaii air carriers and to prescribe classifications, rules, and practices relating thereto, the commission shall give consideration, among other factors, to the following:

- (1) The effect of the rates upon the movement of traffic by the Hawaii air carrier or carriers for which the rates are prescribed;
- (2) The need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and
- (3) The need for revenues sufficient to enable the carriers, under honest, economical, and efficient management, including the operation of service at reasonable load factors, to provide the service.

(f) The commission shall establish and thereafter periodically adjust the recognized level of the fare, rate, or charge. The commission may adjust the recognized level by increasing or decreasing it, as appropriate, by the percentage change in the aggregate cost per available seat mile of similarly situated carriers for fares and per available ton mile for general commodity rates.

(g) The commission shall have no authority to find that any fare, rate, or other charge for service established by any Hawaii air carrier is unjust, unreasonable, or unjustified or to suspend the fare, rate, or other charge on the basis that the fare, rate or charge is too low or too high if the fare, rate, or charge is not more than five per cent higher or ten per cent lower than the recognized level of the fare, rate, or charge. Separate recognized levels shall be established and thereafter periodically adjusted on a peak and off-peak basis for first class fares, normal economy fares, tour basing fares, group fares, kamaaina fares, and for general commodity rates. The commission shall have no authority to find that a contract freight rate is unjust or unreasonable.

**§ -13 Tariffs.** (a) Every Hawaii air carrier shall file with the air carrier commission, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in the form and manner and shall contain the information that the commission shall prescribe by rule. The commission may reject any tariff filed with it that is inconsistent with this section. Any tariff rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a Hawaii air carrier, except after thirty days notice of the proposed change filed and posted in accordance with subsection (a). The commission, in its discretion and for good cause shown, may allow the change upon notice less than that specified or modify the requirements of this section with respect to posting and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No Hawaii air carrier shall engage in the transportation of persons or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever any schedule is filed with the commission stating a new rate, fare, or charge for the transportation of passengers or property by a Hawaii air carrier or any rule or practice affecting the rate, fare, or charge, or the value of the service thereunder, the carrier, on its own initiative may, or by order of the commission served prior to the effective date of the schedule shall, concurrently file an economic justification that shall be prepared under the same form and in the same manner as

prescribed by the commission unless the changed fare or rate is within the zone of fare or rate flexibility established pursuant to section -12(g).

Except as provided in section -12(g), the commission, upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, may enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule or practice, and pending the hearing and decision the commission, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule or practice, by delivering to the affected carrier or carriers not later than five days prior to the effective date of the schedule, a statement in writing of its reasons for the suspension. The commission shall have up to six months from the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, or practice is just and reasonable. In exercising its authority under this subsection and subsection (e), the commission shall consider the factors regarding reasonableness set forth in section -12(e).

(e) When a fare or rate increase application is filed, the commission, in its discretion, may authorize temporary increases in rates, fares, and charges, upon a prima facie showing by a Hawaii air carrier that such fares, rates, or charges are just and reasonable; provided that the commission by order shall require the carrier to keep an accurate account of all amounts received from the increase. The commission, after hearing and decision, shall require a carrier to refund the portion of the increased rates or charges found to be not justified to persons in whose behalf the amounts were paid.

**§ -14 Investigation of unfair or deceptive practices.** The commission, upon its own initiative or upon complaint, if it considers the action to be in the public interest, may investigate and determine whether any Hawaii air carrier has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the commission finds, after notice and hearing, that a carrier is engaged in unfair or deceptive practices or unfair methods of competition, it shall order the carrier to cease and desist from those practices or methods of competition. Notwithstanding section 480-2(d), a complaint may be made by any person, a government, or competing carrier and may relate to practices involving advertising and marketing, service and ancillary services, pricing, or any other aspect of the operations of a Hawaii air carrier.

**§ -15 Issuance of securities; execution of leases.** A Hawaii air carrier, with the approval of the air carrier commission, may issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, and enter into long-term leases of more than five years and leverage leases, for the following purposes:

- (1) For the acquisition or use of property;
- (2) For the construction, completion, extension, or improvement of or addition to its facilities or service;
- (3) For the discharge or lawful refunding of its obligations; and
- (4) For the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the air carrier has kept its accounts for the expenditure in a manner as

to enable the commission to ascertain the amount of moneys expended and the purposes for which the expenditures were made and the sources of the funds in its treasury applied to the expenditures.

A Hawaii air carrier may not issue securities or enter into long-term leases of more than three years and leverage leases, to acquire or use property or to construct, complete, extend, improve, or add to its facilities or service, if the commission determines that the proposed transaction will have a material adverse effect on the carrier's operations. No carrier shall repurchase or reissue its own common stock without the approval of the commission.

This section shall apply to a transaction involving a related company to the extent that the commission determines that the transaction may have a potential impact upon the relevant Hawaii air carrier or its operations. A related company shall notify the commission of any transaction at least sixty days prior to its consummation.

**§ -16 Accounts, records, and reports.** The air carrier commission may require annual, periodic, or special reports from all Hawaii air carriers and related companies. The commission shall prescribe the manner and form in which the reports shall be made.

**§ -17 Unlawful actions; penalties.** (a) Any person who knowingly and wilfully violates any provision of this chapter, or the terms of any certificate, for which violation a penalty is not otherwise provided in this chapter, shall be fined not less than \$500 or more than \$2,000 for the first offense and not less than \$1,000 nor more than \$10,000 for any subsequent offense. Each day of the violation shall constitute a separate offense.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who:

- (1) Knowingly offers, grants, gives, solicits, accepts, or receives any rebate, concession, or discrimination in violation of any provision of this chapter;
- (2) By means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, knowingly and wilfully assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge; or
- (3) Knowingly and wilfully by any such means or otherwise fraudulently seeks to evade or defeat regulations in this chapter,

shall be fined not less than \$100 nor more than \$5,000 for each offense.

(c) Any person who knowingly and wilfully divulges any fact or information that may come to the person's knowledge during the course of any examination or inspection made under authority of this chapter, except as the person may be directed by the commission or by a court or judge of competent jurisdiction, shall be guilty of a misdemeanor.

(d) Any Hawaii air carrier or related company, or any officer, agent, employee, or representative thereof, who knowingly and wilfully fails or refuses to comply with any provision of this chapter, or any rule, filed tariff, or requirement or order thereunder, shall pay a civil penalty to the State in the sum of not less than \$100 nor more than \$5,000 for each offense and, in the case of a continuing violation, a penalty not to exceed \$1,000 for each additional day during which the failure or refusal continues. A penalty shall become due and payable when the person incurring it receives a notice in writing from the air carrier commission, reasonably describing the violation and advising that the penalty is due. Penalties against a related company,

at the discretion of the air carrier commission, may be collected from the related Hawaii air carrier.

(e) The commission may compromise any fine or civil penalty taking into consideration, among other factors, the impact on consumers and remedial measures to be taken.

**§ -18 Hearings.** (a) Unless otherwise provided in this chapter, all hearings, investigations, and proceedings shall be governed by chapter 91 and by rules adopted by the air carrier commission, and in the conduct thereof, the rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a person has the burden of:

- (1) Justifying the reasonableness of its rates, fares, charges, or classifications;
- (2) Establishing the need for service in the public convenience and necessity or of demonstrating that a proposed transaction is consistent with the public interest; or
- (3) Proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier,

the burden shall be satisfied only if the reliable, probative, and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision, or rule made, approved, or confirmed by the commission.

(b) Complaints may be made in writing by the commission on its own motion or by any person or body politic setting forth any act or thing done, or omitted to be done, by any person subject to the commission's jurisdiction, including any rule, rate, or charge, heretofore established or fixed by or for any Hawaii air carrier, in violation or claimed to be in violation, of any law or any order or rule of the commission.

**§ -19 Review and appeals.** (a) Within ten days after the issuance of any final decision or order of the commission under this chapter, any party aggrieved by the action of the commission may submit a petition to the director of transportation requesting the director to review the decision or order. The filing of any petition shall stay the effectiveness of the decision or order until the director has issued a final decision on review. The director may affirm in whole or in part the order or decision of the commission or remand it to the commission for further consideration, in which case the order or decision shall remain stayed until it is again submitted to and approved by the director.

(b) An appeal from an order of the air carrier commission under this chapter, whether or not reviewed by the director, shall be made to the supreme court in the manner and within the time provided by chapter 602 and the rules of court; provided that the order is final. If the order is preliminary, an appeal may be made pursuant to section 91-14(a). The appeal shall not of itself stay the operation of the order appealed from, but the court may stay the order after a hearing upon a motion therefor and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise securing restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained, revised, or modified, in whole or in part.

(c) Any party injured by a violation of this chapter may file an action to enjoin such violation before any court of general jurisdiction of the State of Hawaii.

**§ -20 Existing service.** (a) As of the effective date of enactment of all required federal legislation, any person providing air transportation with turnaround service between two points, both of which are within the State of Hawaii pursu-



ant to authority granted by the United States Department of Transportation, shall be deemed qualified and shall be issued a certificate pursuant to this chapter.

(b) For the purposes of this section, "turnaround service" means the operation of an aircraft that only serves points within the State of Hawaii."

SECTION 3. The provisions of this Act shall be performed to the extent permissible under the United States Constitution and federal law without causing a violation of the United States Constitution, federal grant agreements, federal law, or federal regulations.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 shall take effect upon the enactment of federal legislation permitting implementation of that section.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

## ACT 2

H.B. NO. 2761

A Bill for an Act Relating to Women's Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that improving the health of women in the state can improve the quality of health for families and the community. Nationwide, more than 20,000,000 low-income women receive health coverage and long-term care through medicaid, the nation's public health insurance program for the low-income population. Although medicaid is not typically considered a women's health program, 69 per cent of its adult beneficiaries are women. Medicaid provides a wide range of health services for women including primary care, pregnancy care, reproductive health care, care for chronic conditions and disabilities, assistance with medicare costs, and long-term care. In general, compared to the total population, women participants in the medicaid program tend to be poor, minorities, and mothers. In Hawaii, the medicaid program is implemented through the Hawaii QUEST program.

According to data on 52,932 women in Hawaii who gave birth to children from 2004 to 2006, women enrolled in the Hawaii QUEST health insurance program were, compared with other women who have recently given birth but were covered under other health insurance:

- (1) Three times less likely to access prenatal care in the first trimester of pregnancy;
- (2) Just as likely to have their infants receive their first well-baby check, but twice as likely not to have received the recommended post-partum check for new mothers;
- (3) One-and-a-half times more likely to have an unintended pregnancy;
- (4) At three to four times and two to three times higher risk of being abused before becoming pregnant by their former and current spouses, respectively;
- (5) At three to four times higher risk of experiencing intimate partner violence while pregnant;
- (6) One-and-a-half times more likely to require dental services during pregnancy;
- (7) Three times more likely to smoke during the last three months of pregnancy;
- (8) Three to four times more likely to use illicit drugs during pregnancy;

- (9) Twice as likely to experience post-partum depression;
- (10) Twice as likely not to have initiated breastfeeding; and
- (11) Ten per cent more likely to have a low birthweight or premature infant.

The legislature also finds that pregnancies that recur within a short period of time place great stress on mothers and their infants. Interconception care, or the full scope of preventive and primary care services for women between pregnancies, provides additional intensive interventions to women who have had a previous pregnancy that ended in an adverse outcome, which is an important predictor of future reproductive risk.

The purpose of this Act is to require the department of human services to apply to the federal Centers for Medicare and Medicaid Services to extend post-partum and interconception care from eight weeks to at least six months for women who participate in the Hawaii QUEST program.

SECTION 2. (a) The department of human services shall apply to the federal Centers for Medicare and Medicaid Services to amend the state medicaid plan to extend post-partum and interconception care from eight weeks to a minimum of six months for women who participate in the Hawaii QUEST program, to allow the state to receive federal reimbursement. For the purpose of this section, the term “interconception care” means the full scope of preventive and primary care services for women between pregnancies.

(b) The department of human services shall report to the legislature upon receiving a response from the Centers for Medicare and Medicaid Services on the requested amendment to the state medicaid plan.

SECTION 3. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

## ACT 3

H.B. NO. 2843

A Bill for an Act Relating to Invasive Species.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the unchecked spread of invasive species is the single greatest threat to Hawaii’s economy, natural environment, and the health and lifestyle of Hawaii’s people. Invasive pests can cause millions of dollars in crop losses, the extinction of native species, the destruction of native forests, the spread of diseases, and the quarantine of exported agricultural crops.

Island ecosystems are particularly vulnerable to the destructive power of invasive pests. In Guam, the accidental introduction of the brown tree snake has resulted in widespread devastation. Without natural predators or competition for food, brown tree snake populations have grown exponentially, causing mass extinctions of endemic birds. Where there were once bird songs, the silent forests of Guam are now home to as many as fifteen thousand snakes per square mile. Just one new pest like the brown tree snake could forever change the character of the Hawaiian islands.

Despite our ongoing efforts to detect and eradicate invasive species, our fragile island ecosystems are constantly at risk from insects, disease-bearing organisms, snakes, weeds, and other invasive pests. The coqui frog, Salvinia molesta D.S. Mitchell, Miconia calvescens DC., ohia rust, nettle caterpillar, and little fire ant are all present in Hawaii, disrupting the delicate balance of our ecosystems, crowding out native species, and reducing the biodiversity of our islands. Other harmful species

like the papaya mealybug, erythrina gall wasp, Asian citrus psyllid, and Varroa mite have the potential to devastate our environment and agriculture if allowed to become widespread in Hawaii and spread unchecked by natural predators. The legislature finds that inspection of freight brought into the state is necessary for the protection of the state's ecosystem.

The purpose of this Act is to increase the scope of the existing inspection, quarantine, and eradication service fee to provide funding for the department of agriculture to conduct inspections of imported freight to prevent the introduction of invasive species, and for the facilities necessary to conduct such inspections. This fee applies only to nonpassenger freight. Accordingly, this fee is not a duty of tonnage for entering Hawaiian waters (United States Constitution Article I, Section 10, Clause 3), nor does this fee violate the prohibition on anti-head taxes on airline passengers (Title 49 United States Code Section 40116).

The legislature also finds that the impact of this fee on interstate commerce and the importation of goods is insignificant and that this Act is consistent with the commerce clause (United States Constitution Article I, Section 8, Clause 3), the export-import clause (United States Constitution Article I, Section 10, Clause 2), and the International Convention for Safe Containers, 1972, as amended.

SECTION 2. Section 150A-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“‘Freight’ means nonpassenger goods, cargo, or lading, transported for pay.

“Net weight” means the gross weight of the freight minus the container weight, if any.”

SECTION 3. Section 150A-5.3, Hawaii Revised Statutes, is amended to read as follows:

**“[§150A-5.3] Inspection, quarantine, and eradication service fee and charge.** There is imposed a fee for the inspection, quarantine, and eradication of invasive species contained in any freight, including but not limited to marine commercial container shipment, air freight, or any other means of transporting freight, foreign or domestic, that is brought into the [State] state. The fee shall be paid by the person responsible for paying the freight charges to the transportation company, who shall collect the fee and forward the payment to the department at the port of disembarkation; provided that the transportation company shall not be liable for any fee that is not paid by the person responsible for paying the freight charges to the transportation company. The department shall deposit the fee into the pest inspection, quarantine, and eradication fund under section 150A-4.5.

[The fee shall be computed on the basis of \$1 for each twenty-foot equivalent unit per container. The department shall collect the fee at the port of disembarkation and deposit the fee into the pest [inspection], quarantine, and eradication fund under section 150A-4.5.] The fee shall be assessed on the net weight of the imported freight computed on the basis of 50 cents for every one thousand pounds of freight brought into the state, or part thereof.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on August 1, 2008.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

## ACT 4

S.B. NO. 156

A Bill for an Act Relating to Voting.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 15-4, Hawaii Revised Statutes, is amended to read as follows:

**“§15-4 Request for absentee ballot.** (a) Any person registered to vote may request an absentee ballot in person or in writing from the clerk not earlier than on the sixtieth day and not later than 4:30 p.m. on the seventh day prior to the election. Any mailed requests for an absentee ballot shall be mailed by the person directly to the clerk. The clerk may waive any or all of the foregoing requirements in special cases as provided in the rules adopted by the chief election officer.

The request shall include information such as the person’s social security number, date of birth, and the address under which the person is registered to vote. The request shall also include the address to which the person wishes the requested ballot forwarded. The request, when made for any primary or special primary election, may include an additional request for an absentee ballot to be voted at any election immediately following the primary or special primary; provided the person so indicates in the person’s request.

Subsequent to the closing of registration for each election, the clerk may mail a request form for an absentee ballot to each voter in a remote area who has not already made such a request. The request form shall be accompanied by:

- (1) A stamped, self-addressed envelope; and
- (2) Instructions regarding the manner of completing and returning the request form.

(b) Notwithstanding subsection (a), the clerk shall mail an absentee ballot for each primary, special primary, special, general, and special general election to each registered voter who resides in the county of Kalawao. The chief election officer may adopt rules to carry out this subsection.

(c) When a registered voter requests an absentee ballot, the voter also may include an additional request to receive absentee ballots permanently. After receiving a request for permanent absentee voter status, the clerk shall mail to the voter who requested permanent absentee voter status an absentee ballot for all subsequent elections conducted in that precinct.

(d) The chief election officer shall inform voters of the option of applying for permanent absentee voter status and shall provide any necessary form to request the permanent absentee ballot option to any registered voter requesting an absentee ballot.

(e) A permanent absentee voter shall be responsible for informing the clerk of any changes to personal information, including changes to the voter’s forwarding address.

(f) A voter’s permanent absentee voter status shall be terminated if any of the following conditions apply:

- (1) The voter requests in writing that such status be terminated;
- (2) The voter dies, loses voting rights, registers to vote in another jurisdiction, or is otherwise disqualified from voting;
- (3) The voter’s absentee ballot, voter notification postcard, or any other election mail is returned to the clerk as undeliverable for any reason;  
or
- (4) The voter does not return a voter ballot by 6:00 p.m. election day in both the primary and general election of an election year.

(g) If a voter's permanent absentee voter status has been terminated due to one or more of the conditions specified in subsection (f), the voter shall be responsible for again requesting permanent absentee status as specified in subsection (c)."

SECTION 2. Section 15-11, Hawaii Revised Statutes, is amended to read as follows:

**"§15-11 Voting by absentee voter at polls prohibited.** Any person having voted an absentee ballot pursuant to this [section] chapter shall not be entitled to cast a ballot at the polls on election day. An absentee voter who does cast a ballot at the polls shall be guilty of an election offense under section 19-3(5)."

SECTION 3. There is appropriated from federal funds, received pursuant to the federal Help America Vote Act of 2002, the sum of \$575,000 or so much thereof as may be necessary for fiscal year 2008-2009 for the purpose of implementing and administering the permanent absentee voter program.

The sum appropriated shall be expended by the office of elections for the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$35,000 or so much thereof as may be necessary for fiscal year 2008-2009 to provide the five per cent state matching fund requirement needed to qualify for \$575,000 in federal funds to be used by the office of elections to fulfill the requirements of the federal Help America Vote Act of 2002.

The sum appropriated shall be expended by the office of elections for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2008.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

## ACT 5

S.B. NO. 2262

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 245, Session Laws of Hawaii 2005, as amended by Act 294, Session Laws of Hawaii 2007, is amended by amending section 2 to read as follows:

"SECTION 2. Act 245, Session Laws of Hawaii 2005, is amended by amending section 8 to read as follows:

"SECTION 8. This Act shall take effect upon its approval, for the purpose of establishing a voluntary employees' beneficiary association trust pilot program in March, 2006 and shall be repealed on July 1, [2009:] 2010; provided that sections 89-2, 89-3, 89-6, and 89-9, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the effective date of this Act."

SECTION 2. (a) The board of trustees of the Hawaii employer-union health benefits trust fund shall conduct a certified independent financial audit of the

Hawaii employer-union health benefits trust fund, pursuant to section 87A-24(7), Hawaii Revised Statutes, to cover the Hawaii State Teachers Association, retirees, employees, and employee-beneficiaries who have remained with the Hawaii employer-union health benefits trust fund whether in a bargaining unit or excluded from one, including the State and counties as the employer. The independent auditor shall consult with the state auditor for purposes of the audit to obtain the necessary information for purposes of subsection (b). The audit shall be completed no later than twenty days prior to the convening of the regular session of 2010. The findings and recommendations, including but not limited to methodology and actuarial assumptions, shall be presented to the State auditor for review.

(b) Based upon the independent financial audit under subsection (a), the state auditor shall make findings and recommendations concerning:

- (1) The benefit cost for each benefit plan, including medical, drug, dental, and vision coverage; and
- (2) Administrative cost for the Hawaii employer-union health benefits trust fund for the plan years July 1, 2006 to June 30, 2007, July 1, 2007 to June 30, 2008, and July 1, 2008 to June 30, 2009.

(c) The audit shall include an actuarial certification, to be made by the independent auditor contracted under subsection (a), of the benefit cost for each benefit plan, including medical, drug, dental, and vision, and administrative costs.

(d) Based upon the independent financial audit conducted under subsection (a), the state auditor shall make separate findings and recommendations for the Hawaii State Teachers Association voluntary employees' beneficiary association trust for the plan years July 1, 2006 to June 30, 2007, July 1, 2007 to June 30, 2008, and July 1, 2008 to June 30, 2009, in the same manner as set forth under subsections (a), (b), and (c).

(e) The state auditor shall submit a report of findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2010.

SECTION 3. The board of trustees of the Hawaii employer-union health benefits trust fund and the board of trustees of the Hawaii State Teachers Association voluntary employees' beneficiary association trust shall take all necessary and appropriate actions to assist the state auditor for purposes of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

## ACT 6

S.B. NO. 2263

A Bill for an Act Relating to the University of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the University of Hawaii system is the only public postsecondary educational institution in the state and, as such, maintains a tremendous responsibility in not only providing quality higher education to its students, but also in being held accountable to the public. The legislature further finds that, recently, much of the university's management and operations has been called into question, including its current practice of preventing public access to

information on the potential salaries of new faculty and executive/managerial positions and expenditures of the board of regents. Over the past few years, salaries of university faculty and administrators have dramatically increased. They have escalated to the point that approximately 473 faculty and executive/managerial positions are currently paid salaries that exceed the salary of the governor of Hawaii, which makes the matter one of statewide importance and concern.

The purpose of this Act is to require the disclosure of:

- (1) Information regarding compensation offered to newly hired employees;
- (2) Changes in compensation offered to existing employees for executive/managerial positions in the University of Hawaii system filled by excluded employees; and
- (3) All budgetary expenditures made by the board of regents.

SECTION 2. Section 89C-4, Hawaii Revised Statutes, is amended to read as follows:

**“§89C-4 Adjustments for excluded employees exempt from civil service.**

Each appropriate authority shall determine the adjustments that are relevant for their respective excluded employees who are exempt from civil service in consideration of the compensation and benefit packages provided for other employees in comparable agencies. For executive/managerial positions in the University of Hawaii system filled by excluded employees, proposed compensation or change in compensation shall be disclosed in open meeting for purposes of public comment.”

SECTION 3. Section 304A-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board of regents shall have management and control of the general affairs, and exclusive jurisdiction over the internal structure, management, and operation of the university. The board may ~~[appoint]~~:

- (1) Appoint a treasurer and other officers as it deems necessary~~[-The board may authorize]~~;
- (2) Authorize any officer, elected or appointed by it, to approve and sign on its behalf any voucher or other document that the board may approve and sign~~[-The board may delegate]~~;
- (3) Delegate to the president or the president’s designee the authority to render the final decision in contested case proceedings subject to chapter 91, as it deems appropriate~~[-The board may purchase]~~;
- (4) Purchase or otherwise acquire lands, buildings, appliances, and other property for the purposes of the university ~~[and expend such]~~; and
- (5) Expend any sums of money as, from time to time, may be placed at the disposal of the university from whatever source~~[-]~~; provided that notwithstanding any other law to the contrary, all documents regarding expenditures and changes thereto, made by the board shall be disclosed in open meetings for the purpose of public comment; provided further that all expenditure requests, proposals, and any other budgetary documents used by the board at an open meeting shall be made available to the public at least six calendar days before the meeting.

All lands, buildings, appliances, and other property so purchased or acquired shall be and remain the property of the university to be used in perpetuity for the benefit of the university. The board, in accordance with this section and other law, shall manage the inventory, equipment, surplus property, and expenditures of the university and, subject to chapter 91, may adopt rules, further controlling and regulating the same.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.  
(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

## ACT 7

S.B. NO. 2345

A Bill for an Act Relating to Children.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that an estimated six thousand children in the State of Hawaii have a parent in prison. Many children of incarcerated parents experience grief, guilt, shame, fear, depression, and have difficulty sleeping or concentrating. Although children need to maintain contact with their parent, visits at correctional facilities can be frightening for some children.

The purpose of this Act is to help maintain the well-being of children of incarcerated parents and support their needs.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§346- Guiding principles to be used by state agencies when dealing with children of incarcerated parents.** The guiding principles to be used by the state agencies when dealing with children of incarcerated parents shall be as follows:

- (1) Children should be treated with respect and dignity at all times;
- (2) The children’s safety and care should be of paramount importance to all involved;
- (3) If the children so choose, communication avenues should be made available such that the children should have opportunities to see, speak to, or visit parents, where appropriate;
- (4) State support for the children should be provided as resources permit;
- (5) The children should be kept safe and informed at the time of the parent’s arrest;
- (6) The children’s wishes should be taken into consideration regarding any decisions made concerning their welfare;
- (7) The children’s wishes should be taken into consideration when decisions are made about their incarcerated parent;
- (8) Children should be well cared for in the absence of an incarcerated parent;
- (9) Children should receive proper support during any struggles with the parent’s incarceration;
- (10) Children should not be judged, blamed, or labeled because of a parent’s incarceration; and
- (11) Children should receive support for the desire to retain a relationship with an incarcerated parent, where appropriate.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.  
(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

### Note

1. Edited pursuant to HRS §23G-16.5.



## ACT 8

S.B. NO. 2542

A Bill for an Act Relating to Public Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that federally qualified health centers provide the best system of community-based primary care for people who are uninsured, underinsured, or medicaid recipients. However, over the years, the federally qualified health centers and rural health clinics have experienced a tremendous increase in usage. Adding to the strain placed on these facilities are the following:

- (1) The ever-evolving nature and complexity of the services provided;
- (2) Inadequate procedures through which medicaid payment and changes in the scope of services provided are addressed; and
- (3) The lack of adequate funding to pay for services for the uninsured.

The purpose of this Act is to ensure that the community health center system remains financially viable and stable in the face of the increasing needs of the population of uninsured and underinsured residents by creating a process whereby community health centers and rural health clinics will receive supplemental medicaid payments and seek modifications to their scope of services.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

**“§346-A Centers for Medicare and Medicaid Services approval.** The department shall implement sections 346-B, 346-C, and 346-D, subject to approval of the Hawaii medicaid state plan by the Centers for Medicare and Medicaid Services.

**§346-B Federally qualified health centers and rural health clinics; reconciliation of managed care supplemental payments.** (a) Federally qualified health centers or rural health clinics that provide services under a contract with a medicaid managed care organization shall receive estimated quarterly state supplemental payments for the cost of furnishing such services that are an estimate of the difference between the payments the federally qualified health center or rural health clinic receives from medicaid managed care organizations and payments the federally qualified health center or rural health clinic would have received under the Benefits Improvement and Protection Act of 2000 prospective payment system methodology. Not more than one month following the beginning of each calendar quarter and based on the receipt of federally qualified health center or rural health clinic submitted claims during the prior calendar quarter, federally qualified health centers or rural health clinics shall receive the difference between the combination of payments the federally qualified health center or rural health clinic receives from estimated supplemental quarterly payments and payments received from medicaid managed care organizations and payments the federally qualified health center or rural health clinic would have received under the Benefits Improvement and Protection Act of 2000 prospective payment system methodology. Balances due from the federally qualified health center shall be recouped from the next quarter's estimated supplemental payment.

(b) The federally qualified health center or rural health clinic shall file an annual settlement report summarizing patient encounters within one hundred fifty days following the end of a calendar year in which supplemental payments are received from the department. The total amount of supplemental and medicaid managed care organization payments received by the federally qualified health center or rural health clinic shall be reviewed against the amount that the actual number of visits provided under the federally qualified health centers' or rural health clinics' contract with the

medicaid managed care organization would have yielded under the prospective payment system. The department shall also receive financial records from the medicaid managed care organization. As part of this review, the department may request additional documentation from the federally qualified health center or rural health clinic and the medicaid managed care organization to resolve differences between medicaid managed care organization and provider records. Upon conclusion of the review, the department shall calculate a final payment that is due to or from the participating federally qualified health center or rural health clinic. The department shall notify the participating federally qualified health center or rural health clinic of the balance due to or from the federally qualified health center or rural health clinic. The notice of program reimbursement shall include the department's calculation of the balance due to or from the federally qualified health center or rural health clinic.

(c) For the purposes of this section, the payments received from medicaid managed care organizations exclude payments for non-prospective payment system services, managed care risk pool accruals, distributions, or losses, or any pay-for-performance bonuses or other forms of incentive payments such as quality improvement recognition grants and awards.

(d) An alternative supplemental managed care payment methodology other than the one set forth herein may be implemented as long as the alternative payment methodology is consented to in writing by the federally qualified health center or rural health clinic to which the methodology applies.

**§346-C Federally qualified health center or rural health clinic; adjustment for changes to scope of services.** (a) Prospective payment system rates may be adjusted for any increases or decreases in the scope of services furnished by a participating federally qualified health center or rural health clinic, provided that:

- (1) The federally qualified health center or rural health clinic notifies the department in writing of any changes to the scope of services and the reasons for those changes within sixty days of the effective date of the changes;
- (2) The federally qualified health center or rural health clinic submits data, documentation, and schedules that substantiate any changes in services and the related adjustment of reasonable costs following medicare principles of reimbursement; and
- (3) The federally qualified health center or rural health clinic proposes a projected adjusted rate within one hundred fifty days of the changes to the scope of services.

(b) This proposed projected adjusted rate is subject to departmental approval. The proposed projected adjusted rate shall be calculated based on a consolidated basis where the federally qualified health center or rural health clinic takes all costs for the center that would include both the costs included in the base rate, as well as the additional costs, provided that the federally qualified health center or rural health clinic calculated the baseline prospective payment system rate based on total consolidated costs. A net change in the federally qualified health center's or rural health clinic's rate shall be calculated by subtracting the federally qualified health center's or rural health clinic's previously assigned prospective payment system rate from its projected adjusted rate.

(c) Within one hundred twenty days of its receipt of the projected adjusted rate and all additional documentation requested by the department, the department shall notify the federally qualified health center or rural health clinic of its acceptance or rejection of the projected adjusted rate. Upon approval by the department, the federally qualified health center or rural health clinic shall be paid the projected rate, which shall be effective from the date of the change in scope of services through

the date that a rate is calculated based upon the first full fiscal year that includes the change in scope of services.

(d) The department shall review the calculated rate of the first full fiscal year cost report if the change of scope of service is reflected in more than six months of the report. For those federally qualified health centers or rural health clinics in which the change of scope of services is in effect for six months or less of the cost report fiscal year, review of the next full fiscal year cost report also is required. The department shall review the calculated inflated weighted average rate of these two cost reports. The total costs of the first year report shall be adjusted to the Medical Economic Index of the second year report. Each report shall be weighted based upon number of patient encounters.

(e) Upon receipt of the cost reports, the prospective payment system rate shall be adjusted following a review by the fiscal agent of the cost reports and documentation. Adjustments shall be made for payments for the period from the effective date of the change in scope of services through the date of the final adjustment of the prospective payment system rate.

(f) For the purposes of prospective payment system rate adjustment, a change in scope of services provided by a federally qualified health center or rural health clinic means the following:

- (1) The addition of a new service, such as adding dental services or any other medicaid covered service, that is not incorporated in the baseline prospective payment system rate or a deletion of a service that is incorporated in the baseline prospective payment system rate;
- (2) A change in service resulting from amended regulatory requirements or rules;
- (3) A change in service resulting from relocation;
- (4) A change in type, intensity, duration, or amount of service resulting from a change in applicable technology and medical practice used;
- (5) An increase in service intensity, duration, or amount of service resulting from changes in the types of patients served, including but not limited to populations with human immunodeficiency virus, acquired immunodeficiency syndrome, or other chronic diseases, or homeless, elderly, migrant, or other special populations;
- (6) A change in service resulting from a change in the provider mix of a federally qualified health center or a rural health clinic or one of its sites;
- (7) Any changes in the scope of a project approved by the federal Health Resources and Services Administration where the change affects a covered service; or
- (8) Changes in operating costs due to capital expenditures associated with a modification of the scope of any of the services, including new or expanded service facilities, regulatory compliance, or changes in technology or medical practices at the federally qualified health center or rural health clinic.

(g) No change in costs, in and of itself, shall be considered a scope of service change unless the cost is allowable under medicaid principles of reimbursement and the net change in the federally qualified health center's or rural health clinic's per visit rate equals or exceeds three per cent for the affected federally qualified health center or rural health clinic site. For federally qualified health centers or rural health clinics that filed consolidated cost reports for multiple sites to establish their baseline prospective payment system rates, the net change of three per cent shall be applied to the average per visit rate of all the sites of the federally qualified health center or rural health clinic for purposes of calculating the costs associated with a scope of service change. For the purposes of this section, "net change" means the per visit change at-

tributable to the cumulative effect of all increases or decreases for a particular fiscal year.

(h) All references in this section to "fiscal year" shall be construed to be references to the fiscal year of the individual federally qualified health center or rural health clinic, as the case may be.

**§346-D Federally qualified health center or rural health clinic visit.** (a) Services eligible for prospective payment system reimbursement are those services that are furnished by a federally qualified health center or rural health clinic that are:

- (1) Within the legal authority of a federally qualified health center to deliver, as defined in Section 1905 of the Social Security Act;
- (2) Actually provided by the federally qualified health center, either directly or under arrangements;
- (3) Covered benefits under the medicaid program, as defined in Section 4231 of the State Medicaid Manual and the Hawaii medicaid state plan;
- (4) Provided to a recipient eligible for medicaid benefits;
- (5) Delivered exclusively by health care professionals, including physicians, physician's assistants, nurse practitioners, nurse midwives, clinical social workers, clinical psychologists, and other persons acting within the lawful scope of their license or certificate to provide services;
- (6) Provided at the federally qualified health center's practice site, a hospital emergency room, in an inpatient setting, at the patient's place of residence, including long term care facilities, or at another medical facility; and
- (7) Within the scope of services provided by the State under its fee-for-service medicaid program and its health QUEST program, on and after August 1994, and as amended from time to time.

(b) Contacts with one or more health professionals and multiple contacts with the same health professional that take place on the same day and at a single location constitute a single encounter, except when one of the following conditions exists:

- (1) After the first encounter, the patient suffers illness or injury requiring additional diagnosis or treatment; or
- (2) The patient makes one or more visits for other services such as dental or behavioral health. Medicaid may pay for a maximum of one visit per day for each of these services in addition to one medical visit.

(c) A federally qualified health center or rural health clinic that provides prenatal services, delivery services, and post natal services may elect to bill the managed care organization for all such services on a global payment basis. Alternatively, it may bill for prenatal and post natal services separately from delivery services and be paid the per visit prospective payment system reimbursement for prenatal and post natal visits. In this case, it may bill the managed care organization separately for inpatient delivery services that are not eligible for prospective payment system reimbursement.

**§346-E Appeal.** A federally qualified health center or rural health clinic may appeal a decision made by the department if the medicaid impact is \$10,000 or more, whereupon the opportunity for an administrative hearing under chapter 91 shall be afforded. Any federally qualified health center or rural health clinic aggrieved by the final decision and order shall be entitled to judicial review in accordance with chapter 92 or may submit the matter to binding arbitration pursuant to chapter 658A."

SECTION 3. (a) Notwithstanding any law to the contrary, reports for final payment under section 346-B, Hawaii Revised Statutes, for each calendar year shall

be filed within one hundred fifty days from the date the department of human services adopts forms and issues written instructions for requesting a final payment under that section.

(b) All payments owed by the department of human services shall be made on a timely basis.

SECTION 4. A federally qualified health center or rural health clinic shall submit a prospective payment system rate adjustment request under section 346-C, Hawaii Revised Statutes, within one hundred fifty days of the beginning of the calendar year occurring after the department of human services first adopts forms and issues written instructions for applying for a prospective payment system rate adjustment under section 346-C, Hawaii Revised Statutes, if, during the prior fiscal year, the federally qualified health center or rural health clinic experienced a decrease in the scope of services; provided that the federally qualified health center or rural health clinic either knew or should have known the rate adjustment would result in a significantly lower per-visit rate. As used in this paragraph, "significantly lower" means an average rate decrease in excess of three per cent.

Notwithstanding any law to the contrary, the first full fiscal year's cost reports shall be deemed to have been submitted in a timely manner if filed within one hundred fifty days after the department of human services adopts forms and issues written instructions for applying for a prospective payment system rate adjustment for changes to scope of service under section 346-C, Hawaii Revised Statutes.

SECTION 5. The department of health may provide resources to nonprofit, community-based health care providers for direct medical care for the uninsured, including:

- (1) Primary medical;
- (2) Dental;
- (3) Behavioral health care; and
- (4) Ancillary services, including:
  - (A) Education;
  - (B) Follow-up;
  - (C) Outreach; and
  - (D) Pharmacy services.

Distribution of funds may be on a "per-visit" basis, taking into consideration need on all islands.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 2008-2009, to the department of health for direct medical care to the uninsured.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 7. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 8. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 2008; provided that section 2 of this Act shall take effect upon approval of the Hawaii medicaid state plan by the Centers for Medicare and Medicaid Services.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 9

S.B. NO. 2668

A Bill for an Act Relating to the University Of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to amend the law relating to the candidate advisory council for the board of regents of the University of Hawaii in conformity with the amendment to article X, section 6 of the Hawaii Constitution, ratified by the voters on November 7, 2006. Specifically, this Act:

- (1) Requires at least 12 members of the board of regents to reside in the geographic areas that they represent;
- (2) Requires the governor to notify the candidate advisory council of vacancies on the board of regents in a timely manner;
- (3) Requires the candidate advisory council to submit to the governor names of candidates for a seat on the board of regents within 60 days following a vacancy;
- (4) Clarifies the requirement for the candidate advisory council's submission of names of board of regents candidates to the governor; and
- (5) Makes confidential all information required by the candidate advisory council regarding board of regents candidates.

SECTION 2. Section 26-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The University of Hawaii shall be headed by an executive board to be known as the board of regents.

The board shall consist of fifteen members. At least one member shall be a University of Hawaii student at the time of the initial appointment. This member may be reappointed for one additional term even though the member may no longer be a student at the time of reappointment. The governor shall reduce the terms of those initially appointed to each seat on the board of regents to provide, as far as practicable, for the expiration of three terms each year; provided that the term of the student member shall not be reduced.

At least twelve members, except for the student member, shall represent and reside in the specified geographic areas as follows:

- (1) Two members from the county of Hawaii;
- (2) Two members from the county of Maui;
- (3) One member from the county of Kauai; and
- (4) Seven members from the city and county of Honolulu.

The board shall have the power, in accordance with the Hawaii Constitution [~~of the State~~] and with law, to formulate policy and to exercise control over the university through its executive officer, the president of the university. The board shall have exclusive jurisdiction over the internal organization and management of the university.”

SECTION 3. Section 304A-104, Hawaii Revised Statutes, is amended to read as follows:

**“§304A-104 Regents; appointment; tenure; qualifications; meetings. (a)**

The affairs of the university shall be under the general management and control of the board of regents consisting of fifteen members who shall be appointed and may be removed by the governor. Except as otherwise provided by law, state officers shall be eligible for appointment and membership. The term of each member shall be five years, except as provided for the initial appointment in section 26-11; provided that

the term of the student member shall be two years. Every member may serve beyond the expiration date of the member's term of appointment until the member's successor has been appointed by the governor and confirmed by the senate in accordance with article X, section 6 of the ~~[state constitution.]~~ Hawaii Constitution. Members shall serve no more than two consecutive five-year terms; provided that the members who are initially appointed to terms of two years or less pursuant to section 26-11(a) may be reappointed to two ensuing five-year terms. If a member is to be appointed to a second term of five years, the senate shall consider the question of whether to reconfirm the member at least one hundred twenty days prior to the conclusion of a member's first five-year term; provided that if the senate is not in session within one hundred twenty days prior to the conclusion of the member's first five-year term, the member shall continue to serve until the senate convenes for the next regular session or the next special session for which the senate is authorized to consider the question of reconfirmation.

(b) At its first meeting after June 30, the board of regents shall elect a chairperson and vice-chairperson, who shall serve until adjournment of its first meeting after June 30 of the next year or thereafter until their successors are appointed. The board shall appoint a secretary, who shall not be a member of the board. The president of the university shall act as executive officer of the board. From May 1, 2007 and until such time that the board of regents has at least fourteen members, seven members of the board of regents shall constitute a quorum to conduct business, and the concurrence of at least seven members of the board of regents shall be necessary to make any action of the board of regents valid; provided that upon filling at least fourteen of the fifteen board of regents seats required under subsection (a), a majority of the board of regents shall constitute a quorum to conduct business, and the concurrence of a majority of all the members to which the board of regents is entitled shall be necessary to make any action of the board of regents valid. The board shall meet at least ten times annually and, from time to time, may meet in each of the counties of Hawaii, Maui, and Kauai.

(c) The governor shall notify the regents candidate advisory council in writing within ten days of receiving notification that a member of the board of regents is resigning, has died, or is being removed by the governor.

~~(e)~~ (d) The members of the board of regents shall serve without pay but shall be entitled to their travel expenses within the [State] state when attending meetings of the board or when actually engaged in business relating to the work of the board."

SECTION 4. Section 304A-104.5, Hawaii Revised Statutes, is amended to read as follows:

~~[[§304A-104.5]—Candidate]~~ **Regents candidate advisory council for the board of regents of the University of Hawaii.** (a) There is established the regents candidate advisory council for the board of regents of the University of Hawaii to present to the governor pools of qualified candidates from which the members of the board of regents shall be nominated and, by and with the consent of the senate, appointed by the governor. The regents candidate advisory council shall establish the criteria for qualifying, screening, and presenting to the governor candidates for membership on the board of regents. The regents candidate advisory council shall be attached to the University of Hawaii for administrative purposes.

(b) Except as provided in subsection (c), within sixty days of convening its first meeting, the regents candidate advisory council shall present no fewer than two and no more than four qualified candidates to the governor for each vacant seat on the board of regents that has arisen due to resignation, death, or removal by the governor; provided that for all subsequent presentations to the governor, the regents candidate

advisory council shall present no fewer than two and no more than four candidates for each seat on the board of regents to the governor within:

- (1) ~~Thirty~~ Sixty days of a vacancy that arises by resignation, death, or removal by the governor; or
- (2) One hundred twenty days prior to the expiration of a term.

The regents candidate advisory council shall be deemed to have fulfilled its obligation under this section upon presentation of the names of the minimum number of candidates required to be presented for each seat or seats on the board of regents.

(c) When there are multiple seats vacant within the same county or within the at-large membership, the regents candidate advisory council shall present candidates for seats on the board of regents to the governor as follows:

- (1) For two seats from the same county or two at-large seats, no fewer than four and no more than six candidates;
- (2) For three seats from the same county, no fewer than five and no more than eight candidates; and
- (3) For more than three seats, the regents candidate advisory council shall determine appropriate minimum numbers of candidates, which shall provide for at least three candidates for the final seat, and maximum numbers of candidates.
- (d) In making its presentations, the regents candidate advisory council shall:
  - (1) Develop a statement that includes the selection criteria to be applied and a description of the responsibilities and duties of a member of the board of regents and distribute this statement to potential candidates;
  - (2) Screen and qualify candidates for each position on the board of regents based on their background, experience, and potential for discharging the responsibilities of a member of the board of regents;
  - (3) Publicly advertise pending vacancies and actively solicit and accept applications from potential candidates;
  - (4) Develop and implement a fair, independent, and nonpartisan procedure for selecting candidates to serve on the board of regents; and
  - (5) Require each candidate to disclose any existing or anticipated contracts with the University of Hawaii or any existing or anticipated financial transactions with the University of Hawaii.

Upon submission of the names of candidates to the governor, ~~[presentations of]~~ the regents candidate advisory council shall ~~[be made]~~ make available the names of candidates to the public ~~[by]~~ through the University of Hawaii.

(e) For each board seat to be filled, the governor shall select one nominee from among the candidates submitted by the regents candidate advisory ~~[council's presentations.]~~ council.

(f) The regents candidate advisory council shall consist of seven members to be appointed without regard to section 26-34 as follows:

- (1) One member shall be appointed by the president of the senate;
- (2) One member shall be appointed by the speaker of the house of representatives;
- (3) One member shall be appointed by the governor;
- (4) One member shall be appointed by one of the co-chairs of the All Campus Council of Faculty Senate Chairs of the University of Hawaii;
- (5) One member shall be appointed by the chairperson of the Executive Council of the University of Hawaii Student Caucus;
- (6) One member shall be appointed by the chairperson of the Association of Emeritus Regents; and
- (7) One member shall be appointed by the president of the University of Hawaii Alumni Association;



provided that members appointed under paragraphs (4) to (7) shall be selected from the general public and may include members of the constituencies represented; provided further that each appointee satisfies the requirements for appointment provided in this subsection, except that individuals who are or have served as members of the executive councils or boards for the organizations under paragraphs (4) ~~and~~ or (5) within the last five years immediately preceding the establishment or a vacancy on the regents candidate advisory council for which the persons may be qualified to fill shall not be eligible to serve as members of the regents candidate advisory council.

The regents candidate advisory council shall be selected in a wholly nonpartisan manner. If any member has not been appointed within one hundred eighty days of ~~the~~ May 1, 2007, the sitting members on the regents candidate advisory council shall make an interim appointment to fill the vacant seat. The interim appointee shall satisfy the requirements for appointment provided in this subsection and shall serve until the time when the appropriate appointing authority makes an appointment for the vacant seat as provided in this subsection. Appointees to the regents candidate advisory council shall have a general understanding of the purposes of higher education, the mission of the University of Hawaii system, and the responsibilities of the board of regents. Appointees shall be individuals who are widely viewed as having placed the broad public interest ahead of special interests, having achieved a high level of prominence in their respective professions, and being respected members of the community.

(g) Members of the regents candidate advisory council shall serve four-year terms; provided that the three members initially appointed by the governor, the president of the senate, and the speaker of the house of representatives shall serve for terms of two years; provided further that terms for appointments of the initial members of the regents candidate advisory council shall be deemed to begin on July 1, 2007, regardless of the actual date of appointment.

(h) If a vacancy occurs, a successor shall be appointed in the same manner and subject to the same qualifications as the person's predecessor. The person appointed to fill a vacancy shall serve for the remainder of the term of the person's predecessor.

(i) The regents candidate advisory council shall operate in a wholly nonpartisan manner. No individual, while a member of the regents candidate advisory council, shall run for or hold any elected office under the United States or the State or any of its political subdivisions.

(j) The regents candidate advisory council shall convene its first meeting on or after thirty-one days from May 1, 2007; provided that, if thirty days after May 1, 2007, all the members to which the regents candidate advisory council is entitled have not yet been appointed, the regents candidate advisory council shall convene its first meeting upon the appointment of a majority of its members. The members of the regents candidate advisory council shall choose a chairperson from among themselves. A majority of all the members to which the regents candidate advisory council is entitled shall constitute a quorum to conduct business. The concurrence of a majority of all the members to which the regents candidate advisory council is entitled shall be necessary to make any action of the regents candidate advisory council valid. The regents candidate advisory council shall meet annually and at other times as necessary. The regents candidate advisory council shall be exempt from part I of chapter 92.

(k) Members of the regents candidate advisory council shall serve without compensation but shall be reimbursed for expenses, including travel, board, and lodging expenses, necessary for the performance of their duties.

(l) Notwithstanding chapter 92F or any other law to the contrary, all information required by the regents candidate advisory council shall be confidential, including without limitation, all council information obtained, reviewed, or considered

before and after council decisionmaking. Confidential regents candidate advisory council information shall include documents, data, or other information that are not of public record, including without limitation, personal financial information; the names of applicants; applications and the personal, financial, and other information contained therein submitted by the applicants to the regents candidate advisory council; interviews; schedules; reports; studies; background checks; credit reports; surveys and reports prepared for or on the regents candidate advisory council's behalf; the results of any evaluations or assessments conducted by the regents candidate advisory council; the substance and details of any discussions with regents candidate advisory council members; and the substance and details of discussions and deliberations of the regents candidate advisory council and any of its committees during meetings.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

## ACT 10

S.B. NO. 2803

A Bill for an Act Relating to Personal Information.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. The purpose of this Act is to implement the recommendations of the December 2007 report of the Hawaii identity theft task force to protect the security of personal information collected and maintained by state and county government agencies.

### PART II

SECTION 2. Chapter 487J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§487J-A Policy and oversight responsibility.** (a) By September 1, 2009, each government agency shall designate an agency employee to have policy and oversight responsibilities for the protection of personal information.

(b) The designated agency employee shall:

- (1) Ensure and coordinate agency compliance with this chapter, chapter 487N, and chapter 487R;
- (2) Assist individuals who have identity theft and other privacy-related concerns;
- (3) Provide education and information to agency staff on privacy and security issues;
- (4) Coordinate with state, county, and federal law enforcement agencies on identity theft investigations; and
- (5) Recommend policies and practices to protect individual privacy rights relating to the individual's personal information.”

SECTION 3. Section 487J-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Personal information” has the same meaning as in section 487N-1.”

SECTION 4. Chapter 487N, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§487N-A Information privacy and security council; established; duties; reports.** (a) There is established an information privacy and security council within the department of accounting and general services for administrative purposes only. Members of the council shall be appointed no later than September 1, 2008, by the governor without regard to section 26-34 and shall be composed of the following representatives:

- (1) Executive agencies that maintain extensive personal information in the conduct of their duties, including the department of education, the department of health, the department of human resources development, the department of human services, and the University of Hawaii, to be selected by the governor;
- (2) The legislature, to be selected by the president of the senate and the speaker of the house of representatives;
- (3) The judiciary, to be selected by the administrator of the courts; and
- (4) The four counties, to be selected by the mayor of each county; provided that the mayor of each county shall determine the extent to which the county may or may not participate.

The comptroller shall serve as chair of the council.

(b) By January 1, 2009, the council shall submit to the legislature a report of the council’s assessment and recommendations on initiatives to mitigate the negative impacts of identity theft incidents on individuals. The report shall emphasize assessing the merits of identity theft passport and identity theft registry initiatives that have been implemented in other states.

(c) No later than June 30, 2009, the council shall develop guidelines to be considered by government agencies in deciding whether, how, and when a government agency shall inform affected individuals of the loss, disclosure, or security breach of personal information that can contribute to identify theft. The guidelines shall provide a standardized, risk-based notification process in the instance of a security breach.

(d) The council shall review the individual annual reports submitted by government agencies, pursuant to section 487N-C and submit a summary report to the legislature no later than twenty days prior to the convening of the regular session of 2010 and each year thereafter. The summary report shall include the council’s findings, significant trends, and recommendations to protect personal information used by government agencies.

The initial report to the legislature also shall include proposed legislation to amend section 487N-2 or any other law that the council deems necessary to conform to the guidelines established under subsection (c).

(e) The comptroller may establish support positions for the information and communication services division, including but not be limited to, legal support, information technology, human resources and personnel, records management, and administrative support.

**§487N-B Personal information security; best practices; websites.** (a) The council shall identify best practices to assist government agencies in improving security and privacy programs relating to personal information. No later than March 31, 2009, the council shall identify best practices relating to:

- (1) Automated tools;
- (2) Training;
- (3) Processes; and
- (4) Applicable standards.

(b) No later than July 31, 2009, the best practices identified by the council shall be posted on each government agency's website in a manner that is readily accessible by employees of the government agency.

**§487N-C Personal information system; government agencies; annual report.** (a) Effective January 1, 2009, any government agency that maintains one or more personal information systems shall submit to the council an annual report on the existence and character of each personal information system added or eliminated since the agency's previous annual report. The annual report shall be submitted no later than September 30 of each year.

- (b) The annual report shall include:
  - (1) The name or descriptive title of the personal information system and its location;
  - (2) The nature and purpose of the personal information system and the statutory or administrative authority for its establishment;
  - (3) The categories of individuals on whom personal information is maintained, including:
    - (A) The approximate number of all individuals on whom personal information is maintained; and
    - (B) The categories of personal information generally maintained in the system, including identification of records that are:
      - (i) Stored in computer accessible records; or
      - (ii) Maintained manually;
  - (4) All confidentiality requirements relating to:
    - (A) Personal information systems or parts thereof that are confidential pursuant to statute, rule, or contractual obligation; and
    - (B) Personal information systems maintained on an unrestricted basis;
  - (5) Detailed justification of the need for statutory or regulatory authority to maintain any personal information system or part thereof on a confidential basis for all personal information systems or parts thereof that are required by law or rule;
  - (6) The categories of sources of personal information;
  - (7) The agency's policies and practices regarding personal information storage, duration of retention of information, and elimination of information from the system;
  - (8) The uses made by the agency of personal information contained in any personal information system;
  - (9) The identity of agency personnel, by job classification, and other agencies, persons, or categories to whom disclosures of personal information are made or to whom access to the personal information system may be granted, including the purposes of access and any restrictions on disclosure, access, and redisclosure;
  - (10) A list identifying all forms used by the agency in the collection of personal information; and
  - (11) The name, title, business address, and telephone number of the individual immediately responsible for complying with this section.
- (c) For purposes of this section:

“Personal information system” means any manual or automated recordkeeping process that contains personal information and the name, personal number, or other identifying particulars of a data subject.

(d) Notwithstanding any other law to the contrary, this report shall be confidential and not disclosed publicly in any form or forum.”

SECTION 5. Section 487N-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Council” means the information privacy and security council established under section 487N-A.”

### PART III

SECTION 6. Act 137, Session Laws of Hawaii 2006, as amended by Act 183, Session Laws of Hawaii 2007, section 11, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect on July 1, [~~2008.~~] 2009.”

### PART IV

SECTION 7. Practices and procedures relating to security of laptops, removable data storage devices, and communication devices. By December 31, 2008, the information privacy and security council established under section 487N-A, Hawaii Revised Statutes, in consultation with the information and communication services division of the department of accounting and general services, and the information technology divisions of the respective counties, shall develop recommended practices and procedures to provide guidance to information technology managers in all government agencies relating to the security of laptops, removable data storage devices, and communication devices used to remotely access applications installed on state or county networks. The council shall include recommendations on best practices and standards for protecting personal information that may be used with, stored on, or transmitted by the foregoing devices.

### PART V

SECTION 8. Third party personal information use contractual provisions.

(a) Effective September 1, 2008, any government agency that:

- (1) Contracts with third parties to provide support services on behalf of the agency that requires access to personal information; or
- (2) Is requested to provide access to social security numbers and other personal information by a credit bureau or similar financial reporting organization,

shall include, in all new or renewed contracts, provisions to protect the use and disclosure of personal information administered by the agency. In developing these provisions, the agency shall take into consideration similar restrictive provisions, included in the Fair Credit Reporting Act (15 U.S.C. section 1681f and 15 U.S.C. section 1681 et seq.) and shall attempt to make the agency’s provisions similar to those in the Fair Credit Reporting Act. Consumer Reporting Agencies, as defined by 15 U.S.C. section 1681a(f) that operate under and are in compliance with 15 U.S.C. section 1681 et seq, shall be deemed to be in compliance with Hawaii law and shall be entitled to a rebuttable presumption of compliance.

(b) Provisions relating to personal information protection in contractual agreements with third parties shall require consistent with subsection (a)(2):

- (1) Implementation of technological safeguards acceptable to the government agency to reduce exposure to unauthorized access to personal information;
- (2) Mandatory training on security awareness topics relating to personal information protection for employees of the third party;
- (3) Confidentiality agreements to be signed by third party employees acknowledging that:
  - (A) The personal information collected, used, or maintained by the government agency is confidential;
  - (B) Access to the personal information is restricted to the minimum necessary; and
  - (C) Use of the personal information is restricted to uses consistent with the services subject to the contractual agreement;
- (4) Clarification that no personal information shall be retained or used for a purpose other than that for which it was originally collected and all copies of personal information records provided by the government agency to the third party shall be destroyed by the third party at the conclusion of the contract;
- (5) Prompt and complete disclosure of security breaches; and
- (6) A complete log of disclosures made of the government agency personal information.

As used in this section, “technological safeguards” means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

## PART VI

**SECTION 9.** (a) Protection of personal information by government agencies. No later than September 1, 2008, all government agencies that collect, maintain, or disseminate documents containing personal information that are subject to disclosure pursuant to section 92F-12, Hawaii Revised Statutes, shall develop and implement a plan to protect and redact personal information, specifically social security numbers, contained in any existing hardcopy documents prior to making the documents available for public inspection. Consumer reporting agencies, as defined by 15 U.S.C. section 1681a(f), which operate under 15 U.S.C. section 1681 et seq., shall continue to have access to personal information, including the nine digit social security numbers as the legislature finds that such access is necessary for criminal background checks, credit reporting for financial transactions and other similar purposes. Agency plans shall be consistent with these purposes.

(b) Written report. Any government agency that fails to develop and implement a plan to protect and redact personal information by September 1, 2008, shall submit to the legislature by September 30, 2008, a written report that details information relating to any documents that contain social security numbers that were disclosed pursuant to section 92F-12, Hawaii Revised Statutes. The written report shall identify the document disclosed, including the date, nature, and purpose of each disclosure and the name and address of the person to whom the disclosure was made. The written report shall not include any disclosure made to the individual to whom the personal information refers.

**SECTION 10.** Budgets. The proposed budget for the development and implementation of the plan to protect and redact personal information in existing, hardcopy records shall be prepared by December 31, 2008, by each government agency, for submittal as part of the respective executive, judiciary, and legislative budgets.

**PART VII**

SECTION 11. Plan to reduce collection and use of social security numbers. No later than December 1, 2008, all government agencies that collect, maintain, or disseminate documents containing personal information that are subject to disclosure pursuant to section 92F-12, Hawaii Revised Statutes, shall develop a written plan to eliminate the unnecessary collection and use of social security numbers. In developing such plans, the agencies shall consider that consumer reporting agencies, as defined by 15 U.S.C. section 1681a(f), which operate under 15 U.S.C. section 1681 et seq., shall continue to have access to personal information, including the nine digit social security numbers as the legislature finds that such access is necessary for criminal background checks, credit reporting for financial transactions and other similar purposes. Agency plans shall be consistent with these purposes.

Each plan shall include provisions to require:

- (1) The collection and use of social security numbers only when required by federal or state law, or when the social security number is the only identifier currently available;
- (2) When required by federal or state law to collect social security numbers, or when the social security number is the only identifier currently available, the agency to proceed as reasonably necessary for the proper administration of lawful agency business; and
- (3) The development of an alternative unique identifier number to replace current discretionary use of social security numbers.

Agencies shall submit their plan for review and comment to the information privacy and security council established by section 487N-A, Hawaii Revised Statutes, no later than December 1, 2008.

SECTION 12. Funding request. Each government agency shall submit to the 2009 regular session of the legislature a funding request for fiscal year 2009-2010 for an amount necessary to implement the agency's plan to eliminate the unnecessary collection or use of social security numbers.

**PART VIII**

SECTION 13. (a) Guidance on recommended human resources practices to protect personal information. No later than January 1, 2010, the lead state and county government agencies that have primary responsibility for human resource functions shall develop and distribute to the appropriate government agencies written guidelines detailing recommended practices to minimize unauthorized access to personal information and personal information systems relating to personnel recruitment, background checks, testing, employee retirement and health benefits, time reporting and payroll issues. The recommended practices shall address, at a minimum:

- (1) Physical safeguards for paper and electronic records stored onsite and offsite, as well as for removable storage media that includes laptop computers, USB storage devices, compact discs, and tapes;
- (2) Administrative safeguards to control and monitor access to human resources personal information systems; and
- (3) Technological safeguards to ensure the confidentiality and integrity of information transmitted over computer networks, laptop computers, and removable storage devices.

(b) Definitions. For the purpose of this part:

“Administrative safeguards” means administrative actions, policies, and procedures to manage the selection, development, implementation, and maintenance of

security measures to protect personal information and to manage the conduct of the workforce in relation to the protection of personal information.

“Physical safeguards” means physical measures, policies, and procedures to protect personal information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.

## PART IX

SECTION 14. (a) Security breach notification policy. No later than September 1, 2009, all government agencies shall develop a written agency policy relating to notification of any security breach of personal information. The policy shall ensure appropriate safeguards to protect personal information and shall apply to electronic system and paper document records that contain personal information.

The security breach notification policy for government agencies shall consider guidelines established by the information privacy and security council under section 487N-A Hawaii Revised Statutes, and shall include provisions to determine:

- (1) Whether security breach notification is required;
- (2) The timeliness of the notification;
- (3) The source of the notification;
- (4) The contents of the notification;
- (5) The manner in which notification shall be provided; and
- (6) Recipients of notification.

(b) Security breach notification policy review and amendment. No later than September 1, 2009, all government agencies shall submit their security breach notification policy to the attorney general, appropriate corporation counsel, or county attorney for review and comment. A government agency’s security breach notification policy shall be promptly amended to incorporate revisions recommended by the attorney general, corporation counsel, or county attorney after review of the security breach notification policy.

Beginning December 31, 2010, government agencies shall review their security breach notification policies by December 31 annually and make amendments as necessary. Information relating to a government agency’s security breach notification policy, including any amendments, shall be disseminated to the appropriate employees in each government agency.

## PART X

SECTION 15. Definitions. For purposes of this Act:

“Government agency” has the same meaning as in section 487N-1, Hawaii Revised Statutes.

“Personal information” has the same meaning as in section 487N-1, Hawaii Revised Statutes.

“Personal information system” means any manual or automated recordkeeping process that contains personal information and the name, personal number, or other identifying particulars of a data subject.

“Records” has the same meaning as in section 487N-1, Hawaii Revised Statutes.

“Security breach” has the same meaning as in section 487N-1, Hawaii Revised Statutes.

SECTION 16. In codifying the new sections added by sections 2 and 4 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.



## PART XI

SECTION 17. (a) There is established no later than July 1, 2008, within the office of the auditor, the identity theft task force working group, to:

- (1) Provide continuity from the work of the identity theft task force, established pursuant to Act 65, Session Laws of Hawaii 2005, as amended by Act 140, Session Laws of Hawaii 2006; and
- (2) Assist in the transition and development of recommendations and best practices related to personal information.

(b) The working group shall include five members of the identity theft task force, the auditor, and the consultant retained by the auditor for the work of the identity theft task force.

(3)<sup>1</sup> The identity theft task force working group shall cease to exist on June 30, 2009.

SECTION 18. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 19. This Act shall take effect on July 1, 2008; provided that section 6 shall take effect on June 30, 2008.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

## Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 11

S.B. NO. 2830

*This Act reflects the Legislature's override of the item veto in Act 220.*

A Bill for an Act Relating to Caregiving.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I. JOINT LEGISLATIVE COMMITTEE ON FAMILY CAREGIVING

SECTION 1. (a) The legislature finds that during the 2007 interim, the joint legislative committee on family caregiving continued its work on creating a comprehensive and sustainable, community-based family caregiver support system that includes:

- (1) A coordinated referral and case management service;
- (2) Centralization of available services;
- (3) Volunteers;
- (4) Education and training; and
- (5) Financial assistance.

During the 2007 interim, the joint legislative committee examined localized studies and surveys, some of which contained preliminary results, which provided concrete evidence of the needs of family caregivers. The joint legislative committee also studied what other states have done and are doing in response to the growing concern regarding eldercare issues.

- (b) The purpose of this part is to:

- (1) Extend the work of the joint legislative committee on family caregiving for one year and require the committee to submit a report of its findings and recommendations to the legislature prior to the convening of the 2009 regular session;
- (2) Change the name of the joint legislative committee on family caregiving to the “joint legislative committee on aging in place”; and
- (3) Require the aging and disability resource center to provide the joint legislative committee with an update on the physical site for the center in Hawaii county and the “virtual” site in the city and county of Honolulu.

SECTION 2. Act 285, Session Laws of Hawaii 2006, as amended by Act 204, Session Laws of Hawaii 2007, is amended by amending section 2 to read as follows:

“SECTION 2. (a) There is established a joint legislative committee on ~~[family caregiving.]~~ aging in place. The committee shall be composed of eight members as follows:

- (1) Four members of the house of representatives, consisting of three members from the majority party and one member from the minority party, who shall be appointed by the speaker of the house of representatives; and
- (2) Four members of the senate, consisting of three members from the majority party and one member from the minority party, who shall be appointed by the president of the senate.

The committee shall select a chairperson from its membership.

(b) The joint legislative committee shall develop comprehensive public policy to strengthen support for family caregivers. For purposes of this Act, “family caregiver” means:

- (1) A person, including a non-relative such as a friend or neighbor, who provides unpaid, informal assistance to a person age sixty and older with physical or cognitive disabilities; and
- (2) A grandparent who is a caregiver for a grandchild who is age eighteen years or younger, or who is nineteen years of age or older with physical or cognitive limitations.

(c) The joint legislative committee shall:

- (1) Consider providing support in categories including:
  - (A) Coordinated services and policies;
  - (B) Training and education;
  - (C) Respite services;
  - (D) Financial incentives; and
  - (E) Balancing work and caregiving; ~~[and]~~  
and
- (2) Explore establishing a paid family leave program under the state temporary disability insurance law, similar to the California Paid Family Leave Program, to provide wage replacement benefits to employees who take time off from work to care for a seriously ill family member.

(d) The joint legislative committee may explore issues of “aging in place” as they relate to family caregiving.

(e) The Hawaii aging and disability resource center shall provide an update to the joint legislative committee of its development and implementation of the physical site for the center in the county of Hawaii, and the “virtual” site planned for the city and county of Honolulu.

~~[(d)]~~ (f) The joint legislative committee shall seek input from the department of health, the department of human services, the department of taxation, the

University of Hawaii, the executive office on aging, and the elderly, disability, business, and faith-based communities.

~~[(e)]~~ (g) The joint legislative committee shall submit its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular sessions of 2007 ~~[and]~~, 2008~~[-]~~, and 2010.

~~[(f)]~~ (h) The joint legislative committee shall cease to exist on June 30, ~~[2008.]~~ 2010.”

## PART II. FINANCIAL ASSISTANCE FOR CAREGIVING

SECTION 3. The cash and counseling program is a national initiative sponsored by the Robert Wood Johnson Foundation; the United States Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation; and the Administration on Aging. Under the program, recipients of medicaid personal care services or home- and community-based services receive a flexible monthly allowance and can decide whom to hire and what services to receive. The program's innovative approach enables participants to direct and manage their personal assistance services according to their own specific needs. Participants can choose a family member or friend, in lieu of an agency worker, to provide the services. They receive counseling and fiscal assistance to help them manage their allowance and responsibilities. The program was first implemented in Arkansas, New Jersey, and Florida, and has since expanded to include other states.

During the 2007 interim, the joint legislative committee on family caregiving received information and data related to the family caregiver needs assessment conducted by the executive office on aging, and cash and counseling research conducted by the executive office on aging and the University of Hawaii school of social work. The family caregiver needs assessment indicated that caregivers need more affordable services and financial assistance. The cash and counseling research demonstrated that those states that have cash and counseling programs reported high satisfaction by both caregivers and care recipients and allowed informal caregivers to receive financial recognition for their services.

In Hawaii, there are out-of-pocket costs for families to pay for home- and community-based programs that are available for elders and persons with disabilities. The government pays for services for those who have lower incomes and qualify for medicaid. However, a majority of Hawaii's families are ineligible for public assistance and have to carry the financial burdens of caregiving. This leaves a gap in services for those elders of modest means. As a result, this group of individuals has the least coverage in terms of home- and community-based services.

The work on cash and counseling being conducted by the executive office on aging and the University of Hawaii school of social work will continue until the end of the 2007-2008 fiscal year. The research conducted to date shows that a cash and counseling project is worth pursuing, and it is essential to continue the work in developing phase two of a cash and counseling project, which can be completed by the end of 2008.

SECTION 4. The executive office on aging shall design a cash and counseling project for non-medicaid participants to direct and manage their personal assistance services according to their own specific needs, while enabling family caregivers to receive a level of financial recognition and support. In designing a cash and counseling project, the executive office on aging may consider including a respite care component, a case management component, a separate fiscal agent, a personal care component, and allowing the consumer to be the employer of any service provider, whether an agency or family member.

The executive office on aging may contract with a qualified consultant to assist in designing a cash and counseling project.

The project shall include an advisory group to assist with the design of the cash and counseling project. To ensure that those who have the greatest need and the fewest resources are able to use the program, the advisory group shall examine whether an asset limitation or restriction on consumers shall be implemented in the design of a cash and counseling project.

The executive office on aging shall report on the results of its efforts to design a cash and counseling project as part of the joint legislative committee on aging in place's report to the legislature pursuant to section 2 of this Act.

### PART III. KUPUNA CARE

SECTION 5. (a) On July 1, 1999, the executive office on aging launched its statewide long-term care program called kupuna care. Kupuna care was developed in partnership with the county area agencies-on-aging to address the growing numbers of elders with long-term care needs.

Services provided by kupuna care are intended to help meet the needs of older adults who cannot live at home without adequate help from family or formal services, and includes services such as adult day care, respite care, assisted transportation, attendant care, case management, chores, home-delivered meals, homemaker, transportation, and personal care.

Kupuna care was designed to assist, not totally support, Hawaii's older adults to live independently, safely, and healthily for as long as possible. The care may cover United States citizens or legal aliens sixty years or older who are not receiving other comparable government assistance, who need help with activities of daily living (eating, dressing, bathing, toileting, transferring, and mobility), or because they have reduced mental capacity, and who are not residing in an institution.

Voluntary contributions to the service provider are welcome for any service provided and are used to support the cost of care of additional clients. In addition to the services provided to the elderly, kupuna care also offers services for the family caregivers of their elderly clients. As Hawaii's population ages, many more families will be providing higher levels of long-term care to frail and disabled older adults at home. For many family caregivers, their role as family caregiver arises as suddenly as the care recipient's health declines, leaving the family caregivers with an immediate need for services, but little preparation or education regarding who to contact for assistance or what services are available to them. In addition, family caregivers may not know who is capable or qualified to provide them with the services that they or the care recipients need. Family caregivers themselves need support services, including training, education, and counseling in areas such as caregiving and dealing with end-of-life issues.

In addition, there are emotional, physical, and financial costs of being a family caregiver. Younger family caregivers are often in critical need of finding ways to reduce the stress caused by caregiving. Respite has been shown to reduce stress and other negative consequences of caregiving. The *State of Hawaii Caregivers Need Assessment (2007)* indicates that respite is something that family caregivers need. Besides the everyday stress that respite can relieve, there are times when a family caregiver may unexpectedly be unable to provide the needed caregiving services due to the family caregiver's own illness, accident, or other reasons. At these times, emergency respite care becomes critical.

The needs assessment also indicates that family caregivers need financial support as they carry the heavy financial burdens of caring for a loved one. In addition, both family caregivers and care recipients need financial assistance to make necessary home modifications that enable the care recipient to age in place.

The legislature finds that the kupuna care program can expand its services and incorporate progressive ways of meeting the growing needs of Hawaii's older adults and allow these individuals to age in place.

(b) In addition to current kupuna care operation and services, the purpose of this part is to:

- (1) Allow the kupuna care program to:
  - (A) Offer emergency, overnight, and weekend respite services;
  - (B) Provide grants for home modifications that facilitate aging in place pursuant to a care plan as part of a cash and counseling approach; and
  - (C) Provide grants to family caregivers pursuant to a care plan as part of a cash and counseling approach;
 and
- (2) Increase program funding for kupuna care to ensure that kupuna care continues to maintain the quality of life of Hawaii's older adults and their family caregivers.

SECTION 6. The kupuna care program, as administered by the executive office on aging, may, in addition to its current operation and services:

- (1) Offer emergency, overnight, and weekend respite services;
- (2) Provide grants for home modifications that facilitate aging in place pursuant to a care plan as part of a cash and counseling approach; and
- (3) Provide grants to family caregivers pursuant to a care plan as part of a cash and counseling approach.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 \$0<sup>1</sup> or so much thereof as may be necessary for fiscal year 2008-2009 to address the kupuna care program waitlist and for the expansion of the kupuna care program, in general.

The sum appropriated shall be expended by the executive office on aging for the purposes of this part.

#### **PART IV. GRANDPARENTS RAISING GRANDCHILDREN TASK FORCE**

SECTION 8. (a) Act 204, Session Laws of Hawaii 2007 (Act 204), expanded the mandate of the joint legislative committee on family caregiving by including grandparents of children aged eighteen years and younger, or nineteen years of age or older with physical or cognitive limitations, in Act 204's definition of family caregiver. The revised definition is now more consistent with the scope of the National Family Caregiver Support Program. Act 204 also required the joint legislative committee to examine the issues facing this population of grandparents raising grandchildren.

Since then, numerous government agencies have testified before the joint legislative committee regarding how the agencies identify and address the needs of grandparents raising grandchildren. In addition, the executive office on aging presented the 2007 *Needs Assessment of Grandparents Raising Grandchildren in the State of Hawaii*, prepared by the University of Hawaii's department of family and consumer science.

The needs assessment indicates that, in Hawaii, more than 14,000 grandparents are the primary caregivers for more than 33,000 grandchildren, and that these numbers are expected to grow. While there is a wide range of service needs within this population, the most often-cited are those that relate to children's programs, financial assistance, respite, and grandparents' rights. Many of these services are available, but barriers are preventing grandparents from accessing them. Barriers may include:

- (1) A lack of information regarding the availability of services;
- (2) A lack of services in a particular county; or
- (3) Legal or financial impediments.

For instance, in focus groups, some grandparents expressed a fear of losing their grandchildren. Others identified a need for an advocate or case worker to help guide them to the services and through the various systems.

(b) The legislature finds that the needs assessment provides critical demographic information and feedback regarding what programs and services grandparents require to care for their grandchildren. The findings indicate that the population of grandparents raising grandchildren faces particular challenges, different in some ways from the general caregiver population, and should have a focused task force to specifically address those concerns. The legislature further finds that a comprehensive, coordinated effort is needed to identify:

- (1) The services that exist to meet the identified needs;
- (2) Any service deficiencies;
- (3) Barriers that prevent grandparents from accessing services; and
- (4) What can be done to facilitate the provision of services to grandparents raising grandchildren.

(c) The purpose of this part is to establish a task force to focus specifically on the needs and issues of grandparents raising grandchildren.

SECTION 9. (a) There is established a grandparents raising grandchildren task force to focus on the needs and issues of grandparents raising grandchildren. The task force shall consist of a representative of:

- (1) The University of Hawaii's college of tropical agriculture and human resources to serve as co-chair;
- (2) Queen Lili'uokalani Children's Center to serve as co-chair;
- (3) The University of Hawaii's center on aging research and education;
- (4) The department of education;
- (5) The department of human services;
- (6) The department of health's executive office on aging;
- (7) The department of public safety;
- (8) The judiciary;
- (9) The department of the attorney general's child support enforcement agency;
- (10) Each area office on aging;
- (11) The policy advisory board for elder affairs;
- (12) Na Tutu Coalition;
- (13) Legal Aid Society of Hawaii;
- (14) Volunteer Legal Services Hawaii;
- (15) Partners in Development; and
- (16) An individual who is a grandparent.

(b) In assessing the needs and issues of grandparents raising grandchildren, the task force shall, among other things:

- (1) Review the 2007 *Needs Assessment of Grandparents Raising Grandchildren in the State of Hawaii*, prepared by the University of Hawaii's department of family and consumer science;
- (2) Review the most recent *Four Year State Plan on Aging* submitted to the United States Administration on Aging by the executive office on aging and the area agencies on aging;
- (3) Review the testimony of the various agencies submitted to the joint legislative committee on family caregiving at its hearing on August 16, 2007, regarding issues facing grandparents raising grandchildren;

- (4) Review laws relating to issues of grandparents raising grandchildren, including:
    - (A) Section 302A-482, Hawaii Revised Statutes, regarding the affidavit for caregiver consent, which permits a caregiver, under certain circumstances, to enroll a minor in school and consent to participation in curricular and co-curricular activities;
    - (B) Chapter 571, Hawaii Revised Statutes, regarding child custody and support; and
    - (C) Chapter 587, Hawaii Revised Statutes, regarding child protective services;
  - (5) Review the memorandum prepared by the department of education to guide school personnel when enrolling students who reside with caregivers;
  - (6) Review the support and services offered to caregivers by the department of education through its comprehensive student support system;
  - (7) Investigate whether a need arises when a minor residing, formally or informally, with a grandparent requires consent for medical service, including when a student needs consent for programs and services under the federal Individuals with Disabilities Act or Section 504 of the Rehabilitation Act of 1973;
  - (8) Investigate the issues that arise when a minor residing formally or informally with a grandparent is returned to the custody of a parent;
  - (9) Investigate any housing issues that may arise when a grandparent is raising a grandchild, particularly when the grandparent resides in senior housing, and identify any state or federal laws or rules that would render a grandparent cohabiting with a grandchild ineligible for housing under a particular scheme;
  - (10) Review how each area office on aging allocates the federal funds it receives under the national family caregiver support program for grandparent programs;
  - (11) Identify the agencies that collect data relating to grandparents raising grandchildren and determine whether the data can be more comprehensive, uniform, and readily available or exchanged; and
  - (12) Identify legal needs and whether these needs are being adequately addressed.
- (c) The task force shall submit an interim report to the legislature and the joint legislative committee on aging in place no later than twenty days prior to the convening of the 2009 regular session and a final report to the legislature and the joint legislative committee on aging in place no later than twenty days prior to June 30, 2009. The final report shall include, to the greatest extent possible:
- (1) A list of the services that exist in each county to meet grandparents' identified needs;
  - (2) A discussion of service deficiencies in each county;
  - (3) A discussion of identifiable barriers that prevent grandparents from accessing services;
  - (4) A summary of the task force's work and any findings regarding the task force's responsibilities as detailed in subsection (b); and
  - (5) Recommendations, including any proposed legislation.
- (d) The task force shall cease to exist on June 30, 2009.

## PART V. RESPITE CARE

SECTION 10. The joint legislative committee on aging in place has been diligent in its role to strengthen support to family caregivers through respite care.

The legislative reference bureau conducted a study pursuant to House Concurrent Resolution No. 187 (2007), regarding how other states address the issue of respite care. The report indicates that respite is beneficial in ameliorating stress and other negative consequences of caregiving. Additionally, a comprehensive family caregiver needs assessment conducted pursuant to Act 204, Session Laws of Hawaii 2007, indicated that respite care is one of the top choices of assistance that caregivers feel would be helpful.

Respite care can relieve the everyday stress of providing round-the-clock care. However, there are times when emergency respite care becomes critical in instances where a family caregiver is unexpectedly unable to provide care because of illness, an accident, or other reasons.

The legislature finds that more needs to be done to determine the full inventory of respite care providers and the specific types of respite care provided in the State. The types of respite care can include planned respite care, short-term respite, or emergency respite care. Additionally, although respite services may be available, caregivers are not always aware that these services are offered or may not know where to go to seek assistance.

The purpose of this part is to request the executive office on aging to continue its respite inventory project pursuant to House Concurrent Resolution No. 187 (2007), in collaboration with the University of Hawaii school of social work.

SECTION 11. The executive office on aging, in collaboration with the University of Hawaii school of social work, shall:

- (1) Continue to conduct an inventory of respite services in Hawaii;
- (2) Propose a definition of "respite care";
- (3) Establish more detailed descriptions of each of the various types of respite services provided in the State; and
- (4) Review the legislative reference bureau's 2007 report on respite policies in other states to identify the most promising approaches for Hawaii to support expanding respite services, including how much support is financed, what types of respite are provided and to whom, and who performs the respite services.

## PART VI. CARE HOME PAYMENTS

SECTION 12. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The director, pursuant to chapter 91, shall determine the rate of payment for domiciliary care, including care provided in licensed developmental disabilities domiciliary homes, community care foster family homes, and certified adult foster homes, to be provided to recipients who are eligible for Federal Supplementary Security Income or public assistance, or both. The director shall provide for level of care payment as follows:

- (1) ~~[For] Beginning on July 1, 2008, for~~ adult residential care homes classified as facility type I, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, community care foster family homes as defined under section 346-331, and certified adult foster homes as defined under section 321-11.2, the state supplemental payment shall not exceed ~~[\$641.90;]~~ \$651.90; and
- (2) ~~[For] Beginning on July 1, 2008, for~~ adult residential care homes classified as facility type II, the state supplemental payment shall not exceed ~~[\$749.90;]~~ \$759.90. ~~[and~~
- (3) ~~For skilled nursing facilities and intermediate facilities, the state supplemental payment shall not exceed \$20.]~~



If the operator does not provide the quality of care consistent with the needs of the individual to the satisfaction of the department, the department may remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection shall allow the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator is agreeable to the recipient remaining, except where the recipient requires a higher level of care than provided or where the recipient no longer requires any domiciliary care.”

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$289,000 or so much thereof as may be necessary for fiscal year 2008-2009 for increases in level of care payments as provided for in this part.

The sum appropriated shall be expended by the department of human services for the purposes of this part.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2008.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

#### Note

1. Item vetoed, replaced with “\$0”, and initialed “LL”; item veto overridden and initialed “CH” and “C.K.Y.Say”.

## ACT 12

S.B. NO. 2840

A Bill for an Act Relating to Self-Sufficiency.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that a self-sufficiency standard that is measured appropriately and updated consistently for the State of Hawaii would much more accurately reflect the actual income needed to afford the basic necessities of life.

In 2003, a study conducted for the Hawaii state commission on the status of women calculated the bare-minimum costs for housing, child care, food, transportation, health care, clothing and household costs, and federal and state tax obligations. The result was a measurement of the cost of living in Hawaii that took into account family size, children’s ages, geography, and number of household wage-earners. The study found that certain households in Hawaii could require as much as double to triple the amount listed in the federal poverty guidelines to meet their basic living needs. A self-sufficiency standard for Hawaii would be an excellent tool for lawmakers, the business and education communities, and the nonprofit sector to improve efforts to help lower-income families reach economic sufficiency.

The purpose of this Act is to establish and update biennially a self-sufficiency standard for Hawaii.

SECTION 2. Section 201-3, Hawaii Revised Statutes, is amended to read as follows:

**“§201-3 Specific research and promotional functions of the department.**

Without prejudice to its general functions and duties the department of business, economic development, and tourism shall have specific functions in the following areas:

- (1) Industrial development. The department shall determine through technical and economic surveys the profit potential of new or expanded industrial undertakings; develop through research projects and other means new and improved industrial products and processes; promote studies and surveys to determine consumer preference as to design and quality and to determine the best methods of packaging, transporting, and marketing the State’s industrial products; disseminate information to assist the present industries of the State, to attract new industries to the State, and to encourage capital investment in present and new industries in the State; assist associations of producers and distributors of industrial products to introduce ~~[such]~~ these products to consumers; and make ~~[such]~~ grants or contracts as may be necessary or advisable to accomplish the foregoing;
- (2) Land development. The department shall encourage the most productive use of all land in the State in accordance with a general plan developed by the department; encourage the improvement of land tenure practices on leased private lands; promote an informational program directed to landowners, producers of agricultural and industrial commodities, and the general public regarding the most efficient and most productive use of the lands in the State; and make ~~[such]~~ grants or contracts as may be necessary or advisable to accomplish the foregoing;
- (3) Credit development. The department shall conduct a continuing study of agricultural and industrial credit needs; encourage the development of additional private and public credit sources for agricultural and industrial enterprises; promote an informational program to acquaint financial institutions with agricultural and industrial credit needs and the potential for agricultural and industrial expansion, and inform producers of agricultural and industrial products as to the manner in which to qualify for loans; and make ~~[such]~~ grants or contracts as may be necessary or advisable to accomplish the foregoing;
- (4) Promotion. The department shall disseminate information developed for or by the department pertaining to economic development to assist present industry in the State, attract new industry and investments to the State, and assist new and emerging industry with good growth potential or prospects in jobs, exports, and new products. The industrial and economic promotional activities of the department may include the use of literature, advertising, demonstrations, displays, market testing, lectures, travel, motion picture and slide films, and ~~[such]~~ other promotional and publicity devices as may be appropriate; ~~[and]~~
- (5) Tourism research and statistics. The department shall maintain a program of research and statistics for the purpose of:
  - (A) Measuring and analyzing tourism trends;
  - (B) Providing information and research to assist in the development and implementation of state tourism policy;
  - (C) Encouraging and arranging for the conduct of tourism research and information development through voluntary means or through contractual services with qualified agencies, firms, or persons; and
  - (D) Providing tourism information to policy makers, the public, and the visitor industry. This includes:

- (i) Collecting and publishing visitor-related data including visitor arrivals, visitor characteristics and expenditures;
  - (ii) Collecting and publishing hotel-related statistics including the number of units available, occupancy rates, and room rates;
  - (iii) Collecting and publishing airline-related data including seat capacity and number of flights;
  - (iv) Collecting information and conducting analyses of the economic, social, and physical impacts of tourism on the State;
  - (v) Conducting periodic studies of the impact of ongoing marketing programs of the Hawaii tourism authority on Hawaii's tourism industry, employment in Hawaii, state taxes, and the State's lesser known and underutilized destinations; and
  - (vi) Cooperate with the Hawaii tourism authority and provide it with the above information in a timely manner[-]; and
- (6) Self-sufficiency standard. The department shall establish and update biennially a self-sufficiency standard that shall incorporate existing methods of calculation, and shall reflect, at a minimum, costs relating to housing, food, child care, transportation, health care, clothing and household expenses, federal and state tax obligations, family size, children's ages, geography, and the number of household wage earners. The department shall report to the legislature concerning the self-sufficiency standard no later than twenty days prior to the convening of the regular session of 2009, and every odd-numbered year thereafter. The recommendations shall address, among other things, the utilization of any federal funding that may be available for the purposes of establishing and updating the self-sufficiency standard.

The department shall be the central agency to coordinate film permit activities in the State.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2008.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

## ACT 13

S.B. NO. 2843

A Bill for an Act Relating to Electronic Device Recycling.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Available estimates suggest that over 100,000,000 computers, monitors, and televisions become obsolete each year, and this number is growing. If improperly managed, these used electronics can harm the environment and human health. These electronics contain valuable resources such as copper, gold, and aluminum, and if the electronics are disposed of in landfills, these valuable resources are lost for future use. Additionally, research shows that toxic substances with known adverse health effects, such as lead, have the potential to leach from discarded electronics in landfills. In Hawaii, an additional problem is presented by the limited amount

of space in our state's landfills. Valuable space could be saved by providing a method to encourage recycling of used and discarded electronics.

The purpose of this Act is to encourage recycling of electronic devices sold within the State by establishing an electronic device recycling program.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
ELECTRONIC WASTE RECYCLING ACT**

**§ -1 Definitions.** As used in this chapter:

“Brand” means symbols, words, or marks that identify a covered electronic device, rather than any of its components.

“Covered entity” means any household, government entity, business, or non-profit organization exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code, regardless of size or place of operation within the State.

“Covered electronic device”:

- (1) Means a computer, computer printer, computer monitor, or portable computer, with a screen size greater than four inches measured diagonally; and
- (2) Shall not include:
  - (A) A covered electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by or for a motor vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;
  - (B) A covered electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment;
  - (C) A covered electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or
  - (D) A telephone of any type.

“Department” means the department of health.

“Household” means any occupant of a single detached dwelling unit or of a single unit of a multiple dwelling unit who has used a covered electronic device at a dwelling unit primarily for personal or home business use.

“Manufacturer” means any existing person:

- (1) Who manufactures or manufactured covered electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;
- (2) Who sells or sold covered electronic devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;
- (3) Who manufactures or manufactured covered electronic devices without affixing a brand;
- (4) Who manufactures or manufactured covered electronic devices to which it affixes or affixed a brand that it neither owns or owned nor is or was licensed to use; or

- (5) For whose account covered electronic devices manufactured outside the United States are or were imported into the United States; provided that if at the time such covered electronic devices are or were imported into the United States and another person has registered as the manufacturer of the brand of the covered electronic devices, this paragraph shall not apply;

provided that the term “manufacturer” shall not include persons located in the State who manufacture specialized computers and have sales of no more than one hundred computers per year.

“New covered electronic device” means a covered electronic device that is manufactured after the effective date of this chapter.

“Person” means any individual, business, partnership, limited liability company, corporation, not-for-profit organization, association, government entity, public benefit corporation, or public authority.

“Program year” means a full calendar year beginning on or after January 1, 2010.

“Recycling” means processing (including disassembling, dismantling, or shredding) covered electronic devices or their components to recover a useable product. “Recycling” does not include any process defined as incineration under applicable laws and rules.

“Retailer” means any person who offers covered electronic devices for sale, other than for resale by the purchaser, through any means, including sales outlets, catalogs, or the Internet.

“Sell” or “sale” means any transfer for consideration of title, including transactions conducted through sales outlets, catalogs, or the Internet, but excluding leases.

**§ -2 Scope of products.** The collection, transportation, and recycling provisions of this chapter shall apply only to covered electronic devices used and discarded in this State by a covered entity.

**§ -3 Sales prohibition.** (a) Beginning January 1, 2010, no manufacturer or retailer shall sell or offer for sale any new covered electronic device for delivery in this State unless:

- (1) The covered electronic device is labeled with a brand, and the label is permanently affixed and readily visible; and
- (2) The brand is included in a registration that is filed with the department and that is effective pursuant to section -4(b)(3).

(b) Beginning April 1, 2009, the department shall maintain a list of each registered manufacturer and the brands reported in each manufacturer’s registration and a list of brands for which no manufacturer has registered. The lists shall be posted on the department website and shall be updated by the first day of each month. Each retailer who sells or offers for sale any new covered electronic device for delivery in this State shall review these lists prior to selling the covered electronic device. A retailer is considered to have complied with subsection (a) if, on the date a new covered electronic device was ordered by the retailer, the brand was included on the department’s list of brands reported in a manufacturer’s registration.

**§ -4 Manufacturer responsibility.** (a) Beginning October 1, 2009, each manufacturer shall label all new covered electronic devices to be offered for sale for delivery in this State with a brand, which label shall be permanently affixed and readily visible.

- (b) (1) By January 1, 2009, each manufacturer of new covered electronic devices offered for sale for delivery in this State shall register with the department and pay to the department a registration fee of \$5,000.

Thereafter, if a manufacturer has not previously registered, the manufacturer shall register with the department prior to any offer for sale for delivery in this State of the manufacturer's new covered electronic devices.

- (2) Each manufacturer who is registered shall submit an annual renewal of its registration with the payment of a registration fee of \$5,000, by January 1 of each program year.
- (3) The registration and each renewal shall include a list of all of the manufacturer's brands of covered electronic devices and shall be effective on the second day of the succeeding month after receipt by the department of the registration or renewal.

(c) By June 1, 2009, and annually thereafter, each manufacturer shall submit a plan to the department to establish, conduct, and manage a program for the collection, transportation, and recycling of its covered electronic devices sold in the State.

(d) By March 31, 2011, and annually thereafter, each manufacturer shall submit to the department the total weight of all covered electronic devices recycled in the previous year, which may include both a manufacturer's own covered electronic devices and those of other manufacturers.

(e) By July 1, 2011, and annually thereafter, the department shall publish a ranking of all manufacturers selling covered electronic devices in the State, based upon the annual total weight of covered electronic devices recycled by each manufacturer in the previous year.

(f) The State may adopt regulations allowing a procurement preference based upon a manufacturer's ranking.

(g) The department shall review each manufacturer's plan and, within sixty days of receipt of the plan, shall determine whether the plan complies with this chapter. If the plan is approved, the department shall notify the manufacturer or group of manufacturers. If the plan is rejected, the department shall notify the manufacturer or group of manufacturers and provide the reasons for the plan's rejection. Within thirty days after receipt of the department's rejection, the manufacturer or group of manufacturers may revise and resubmit the plan to the department for approval.

(h) The obligations under this chapter for a manufacturer who manufactures or manufactured covered electronic devices, or who sells or sold covered electronic devices manufactured by others, under a brand that was previously used by a different person in the manufacture of covered electronic devices, shall extend to all covered electronic devices bearing that brand.

(i) Nothing in this chapter is intended to exempt any person from liability that the person would otherwise have under applicable law.

**§ -5 Retailer responsibility.** Beginning January 1, 2010, retailers shall make available to their customers information on collection services in the State, including the department's website and toll-free telephone number. Remote retailers may include this information in a visible location on their website to fulfill this requirement.

**§ -6 Department responsibility.** (a)<sup>1</sup> Beginning January 1, 2010, the department shall maintain and update a website and a toll-free number with current information on where covered entities can return covered electronic devices for recycling.

**§ -7 Regulatory authority.** The department may adopt rules, pursuant to chapter 91, necessary to implement this chapter.

**§ -8 Enforcement.** (a) Except as provided in subsection (c), the department and the attorney general shall be empowered to enforce this chapter and take necessary action against any manufacturer or retailer for failure to comply with this chapter or rules adopted thereunder.

(b) The attorney general may file suit to enjoin an activity related to the sale of covered electronic devices in violation of this chapter.

(c) The department shall issue a warning notice to a person for the person's first violation of this chapter. The person shall comply with this chapter within sixty days of the date the warning notice was issued or be subject to the penalties provided by law or rule. A retailer that receives a warning notice from the department for a violation of section -3(a) shall submit proof to the department, within sixty days from the date the warning notice was issued, that its inventory of covered electronic devices offered for sale is in compliance with this chapter.

**§ -9 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter or by rules adopted under this chapter for a violation thereof, the department is authorized to impose by order administrative penalties and is further authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or to bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs.

**§ -10 Electronic device recycling fund.** (a) There is established in the state treasury the electronic device recycling fund into which shall be deposited all fees, payments, and penalties collected by the department pursuant to this chapter.

(b) The electronic device recycling fund shall be administered by the department of health. Moneys in the fund shall be expended by the director solely for the purpose of implementing and enforcing this chapter.

**§ -11 Financial and proprietary information.** Notwithstanding any law to the contrary, financial or proprietary information, including trade secrets, commercial information, and business plans, submitted to the department under this chapter is confidential and is exempt from public disclosure.

**§ -12 Federal preemption.** This chapter shall be deemed repealed if a federal law or a combination of federal laws takes effect that establishes a national program for the collection and recycling of covered electronic devices that substantially meets the intent of this chapter, including the creation of a financing mechanism for collection, transportation, and recycling of all covered electronic devices from covered entities in the United States."

SECTION 3. There is established within the department of health a temporary working group which shall consist of:

- (1) The director of health or the director's designee; and
- (2) A representative of each manufacturer of televisions, whether cathode ray tube-based or flat panel-based, that are sold or offered for sale in the State as of the effective date of this Act.

(b)<sup>2</sup> The working group shall develop a plan to establish, conduct, and manage a program for the collection, transportation, and recycling of televisions sold in the State, to be implemented no later than January 1, 2010. The department of health shall provide necessary administrative, professional, technical, and clerical assistance to the working group.

(c) The working group shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2009.

(d) The working group shall dissolve on June 30, 2009.

(e) If a separate plan for the collection, transportation, and recycling of televisions is not implemented before January 1, 2011, the definition of "covered electronic device" found in section -1 as enacted pursuant to section 2 of this Act shall be amended to include televisions and to read as follows:

"Covered electronic device":

- (1) Means a computer, computer printer, computer monitor, portable computer, or television with a screen size greater than four inches measured diagonally; and
- (2) Shall not include:
  - (A) A covered electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by or for a motor vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;
  - (B) A covered electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment;
  - (C) A covered electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or
  - (D) A telephone of any type.

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. This Act shall take effect on July 1, 2008.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

#### Notes

1. No subsection (b).
2. No subsection (a).

## ACT 14

S.B. NO. 2878

A Bill for an Act Relating to Early Learning.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

#### PURPOSE

SECTION 1. The legislature reaffirms its findings in Act 51, Session Laws of Hawaii 2004, that:



*[A]lthough many responsibilities are laid upon education, ultimately education must do no less than advance the endowment of human culture itself, so that each succeeding generation finds itself further along the road towards peace, social justice, and environmental sustainability in a society guided by creativity, compassion, and curiosity.*

The legislature finds that Hawaii's children, starting at birth, need support and guidance from families, caregivers, and teachers to reach their full potential as citizens. As a report released in 2007 by the National Scientific Council on the Developing Child, *The Science of Early Childhood Development, Closing the Gap Between What We Know and What We Do*, so aptly states:

*The future of any society depends on its ability to foster the health and well-being of the next generation. Stated simply, today's children will become tomorrow's citizens, workers, and parents. When we invest wisely in children and families, the next generation will pay that back through a lifetime of productivity and responsible citizenship. When we fail to provide our children with what they need to build a strong foundation for healthy and productive lives, we put our future prosperity and security at risk.*

Yet, many of Hawaii's children lack the fundamental skills they should have when they enter kindergarten, a problem for which our state, let alone society as a whole, cannot afford a delayed response. *From Neurons to Neighborhoods*, a report developed by a committee of 17 national experts in the fields of education, psychiatry, neuroscience, economics, and public policy, found that:

*[S]triking disparities in what children know and can do are evident well before they enter kindergarten. These differences are strongly associated with social and economic circumstances, and they are predictive of subsequent academic performance.*

Research has confirmed that a large gap exists between the academic abilities of children from high- and low-income families by age six: the latter "lag further behind in acquiring more sophisticated reading and math knowledge and skills such as recognizing words by sight or solving simple addition and subtraction problems" (National Child Care Association, 2002).

The gap can be closed by building an early learning system for Hawaii. Decades of research have determined that investments in high-quality early learning systems, based on the collective involvement of families, caregivers, and teachers, produce significant, long-term benefits for all children. These benefits include improved school success, decreased dropout rates, reduced crime, and increased workforce preparedness and productivity.

Thirty-six states now offer some type of publicly-funded preschool program. Two states, Oklahoma and Georgia, have established preschool systems for all four-year-olds statewide, and New York, Florida, and Illinois are in the process of establishing similar systems.

Hawaii is now one of only a few states in the nation that lacks a state-sponsored early learning system, despite the fact that it was one of the leaders in providing universal access for kindergarten and providing in 2001 a definition for "school readiness," which acknowledged the joint responsibility of families, schools, and communities in preparing children for lifelong learning. The legislature acknowledges the significant milestones achieved thus far in promoting young children's development and school readiness through public and private efforts:

- (1) Hawaii's healthy start program provides home visiting support to 2,400 at-risk children each year, and head start and early head start programs currently serve over 3,000 children from low-income families;
- (2) Publicly-funded subsidies provided by the department of human services — including the preschool open doors program that serves four-

year-old children, and the subsidies provided to eligible parents and caregivers using federal funds from the child care development block grant and temporary assistance to needy families block grant — make private child care and early learning programs more accessible to many children in need;

- (3) Other programs of the department of human services have increased both the quality and quantity of child care services, including the pre-plus program which operates at 16 department of education elementary schools throughout the state, and the child care capacity building and quality incentive payments program which supports professional development and increased capacity at private preschools;
- (4) Local philanthropic educational organizations, such as Kamehameha Schools, operate and otherwise contribute to a full spectrum of early learning services for children from birth until the time they enter kindergarten;
- (5) The United States Department of Defense has developed a nationally-renowned quality child care system that incorporates measures of accountability and offers technical support, and is available to share its expertise with local communities; and
- (6) Act 219, Session Laws of Hawaii 2004, established a two-tier junior kindergarten and kindergarten program within the department of education to support the range of developmental abilities of children. The program allows for an extended period of time for a child to succeed in kindergarten prior to entering first grade.

However, the current landscape of Hawaii's early learning services remains highly fragmented and lacks cohesiveness. Act 77, Session Laws of 1997, created a public-private partnership to build a coordinated system of early childhood care and education, but it lacked sufficient authority, resources, and accountability to reach its intended goal.

The current array of services and expertise form the basis for further development and integration into an early learning system that better serves Hawaii's young children and their families. The legislature finds that the state needs a cohesive, comprehensive, and sustainable early learning system that ensures a spectrum of quality early learning opportunities for young children from birth until the time they enter kindergarten. It is vital that the early learning system be widely accessible and provide high-quality education and services that are evidence- and standards-based and require accountability, all the while maintaining sensitivity to family choice and cultural elements.

In 2006, the 23<sup>rd</sup> legislature passed Act 259, establishing the early learning educational task force, a diverse group of public and private stakeholders given the mission to develop a five-year plan for an early learning system. The resulting plan proposed a comprehensive, voluntary early learning system that would initially offer services to four-year-old children and focus on underserved families. In time, all families, regardless of income or background, would be provided access to high-quality, culturally-responsive early learning services that promote the healthy, successful development of children and their ability to reach their full potential. In late 2007, the task force produced a report to present their plan and findings and recommendations for an early learning system, including cost models with implementation guidelines over either a five- or ten-year period. The task force and its members are to be commended for their excellent efforts that spanned over a year of meetings and discussion. This Act takes into consideration the findings and recommendations of the task force.

The purpose of this Act is to help Hawaii's children succeed upon entry into kindergarten by:

- (1) Establishing an early learning system to be known as keiki first steps;
- (2) Creating the early learning council to develop and administer the state's early learning system;
- (3) Establishing the keiki first steps grant program;
- (4) Statutorily establishing the pre-plus program; and
- (5) Promoting the development of early learning facilities.

PART II  
EARLY LEARNING SYSTEM

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
EARLY LEARNING SYSTEM**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“At-risk children” means children who, because of their home and community environment, are subject to language, cultural, economic, and other disadvantages that cause them to be at risk for school failure, including children:

- (1) Who are eligible for special education services;
- (2) Who are English as a second language learners;
- (3) Who reside within a public school district, established under chapter 302A, that is in need of improvement based on the criteria of the federal No Child Left Behind Act of 2001 (Public Law 107-110), as amended; or
- (4) Whose family income is no more than two hundred fifty per cent of the federal poverty level.

“Center-based” describes programs in which early childhood education and care services are provided in a facility, including private preschools, child care centers, and head start programs, licensed, or excluded or exempt from licensing, by the department of human services.

“Council” means the early learning council established pursuant to this chapter.

“Family child care program” means a program in which a child is cared for in a family child care home licensed under section 346-161.

“Family-child interaction learning program” means a program attended by both a child and at least one adult who is the child's parent, relative, or other caregiver, that facilitates family-child interactive learning experiences for children and educates the family member or members about how to encourage the child's learning.

“Home-based instruction program” means a family-involvement, school-readiness program that helps families prepare their child for success in school and beyond, and that is based in the child's home; provided that home schooling is not a home-based instruction program.

§ -2 **Early learning system; keiki first steps.** There is established an early learning system, to be known as keiki first steps, that shall ensure a spectrum of high-quality early learning opportunities for children throughout the state, from birth until the time they enter kindergarten, with priority given to underserved or at-risk children. The early learning system shall be developed and administered by the early learning council to the extent permissible by law. The early learning system shall:

- (1) Be widely accessible and voluntary for both those served and program and service providers;

- (2) Be a cohesive, comprehensive, and sustainable system in which:
  - (A) All existing early learning programs and services, whether publicly- or privately-run, which consist of a variety of early learning approaches, service deliveries, and settings, including center-based programs, family child care programs, family-child interaction learning programs, and home-based instruction programs designed to promote early learning, are coordinated, improved, and expanded;
  - (B) Public and private resources are maximized; and
  - (C) The use of public facilities for either publicly- or privately-run early learning programs is maximized;
- (3) Provide high-quality early learning experiences with:
  - (A) Standards-based content and curriculum, and accountability; and
  - (B) Sufficient numbers of well-qualified educators and administrators who are fairly compensated and have access to continuing professional development;
- (4) Offer opportunities for family and community engagement and parent education and support; and
- (5) Be sensitive to family choice and cultural diversity.

**§ -3 Early learning council.** (a) There is established an early learning council which shall be attached to the department of education for administrative purposes only, notwithstanding any other law to the contrary. To the extent permissible by law, the council shall develop and administer the early learning system established in section -2 to benefit all children throughout the state, from birth until the time they enter kindergarten. In developing the early learning system, the council shall, among other things:

- (1) Establish policies and procedures governing its operations;
- (2) Develop a plan, with goals and objectives, for the early learning system, including the development, execution, and monitoring of a phased implementation plan;
- (3) Coordinate, improve, and expand upon existing early learning programs and services for children from birth until the time they enter kindergarten;
- (4) Establish policies and procedures to include existing early learning programs and services;
- (5) Establish additional early learning programs and services;
- (6) Establish policies and procedures governing the inclusion of children with special needs;
- (7) Develop incentives to enhance the quality of programs and services within the early learning system;
- (8) Coordinate efforts to develop a highly-qualified, stable, and diverse workforce, including:
  - (A) Ensuring that more early childhood educators and administrators, existing or potential, have opportunities to receive early childhood education degrees, including offering higher education scholarships;
  - (B) Increasing the availability of early childhood education coursework, including distance learning courses and community-based early childhood education training;
  - (C) Providing access to continuing professional development for all educators and administrators;
  - (D) Establishing a system for awarding appropriate credentials to educators and administrators, as incentives to improve the quality of

programs and services, relevant to the various early learning approaches, service deliveries, and settings, such as for experience or coursework or degrees completed;

- (E) Providing consultation on the social-emotional development of children; and
- (F) Providing substitute teacher allowances;
- (9) Develop and implement methods of maximizing the involvement of families, caregivers, and teachers in the early learning system;
- (10) Develop an effective, comprehensive, and integrated system to provide training and technical support to programs and services within the early learning system;
- (11) Develop standards of accountability to ensure that high-quality early learning experiences are provided by programs and services of the early learning system;
- (12) Collect, interpret, and release data relating to early learning in the state;
- (13) Recommend the appropriate proportion of state funds that should be distributed to programs and services across the early learning system, to ensure the most effective and efficient allocation of fiscal resources within the early learning system;
- (14) Promote awareness of early learning opportunities to families and the general public; and
- (15) Consult with community groups, including statewide organizations that are involved in early learning professional development, policy and advocacy, and early childhood programs, to broaden the council's knowledge of early learning.
  - (b) The council shall consist of the following voting members:
    - (1) The superintendent of education or the superintendent's designee;
    - (2) The director of human services or the director's designee;
    - (3) The director of health or the director's designee;
    - (4) The president of the University of Hawaii or the president's designee;
    - (5) A representative of center-based program providers;
    - (6) A representative of family child care program providers;
    - (7) A representative of family-child interaction learning program providers;
    - (8) A representative of philanthropic organizations that support early learning; and
    - (9) Two representatives of the Hawaii Council of Mayors.

The council shall invite the director of the Hawaii head start state collaboration office, the chief executive officer of the Kamehameha Schools, and the executive director of the Hawaii Association of Independent Schools, or their designees, to serve as voting members of the council.

Except for the superintendent of education, directors of state departments, president of the University of Hawaii, director of the Hawaii head start state collaboration office, chief executive officer of the Kamehameha Schools, and executive director of the Hawaii Association of Independent Schools, or their designees, and the two representatives of the Hawaii Council of Mayors, the members shall be nominated and, by and with the advice and consent of the senate, appointed by the governor.

(c) Except for the superintendent of education, directors of state departments, president of the University of Hawaii, director of the Hawaii head start state collaboration office, chief executive officer of the Kamehameha Schools, and executive director of the Hawaii Association of Independent Schools, or their designees, members of the council shall serve staggered terms as follows:

- (1) The representative of center-based program providers shall serve a two-year term;
- (2) The representative of family child care program providers shall serve a three-year term;
- (3) The representative of family-child interaction learning program providers shall serve a three-year term;
- (4) The representative of philanthropic organizations that support early learning shall serve a two-year term; and
- (5) Of the two representatives of the Hawaii Council of Mayors, one shall serve a two-year term, and the other shall serve a three-year term as determined by the Hawaii Council of Mayors.

(d) The council shall select a chairperson by a majority vote of its members; provided that the chairperson shall be a representative from the private sector. A majority of the members serving on the council shall constitute a quorum to do business. The concurrence of the majority of the members serving on the council shall be necessary to make any action of the council valid.

(e) The council may form workgroups and subcommittees, including with individuals who are not council members, to:

- (1) Obtain resource information from early learning professionals and other individuals as deemed necessary by the council;
- (2) Make recommendations to the council; and
- (3) Perform other functions as deemed necessary by the council to fulfill its duties and responsibilities.

Two or more council members, but less than a quorum, may discuss matters relating to official council business in the course of their participation in a workgroup or subcommittee, and such discussion shall be a permitted interaction as provided for in section 92-2.5.

(f) Members of the council shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(g) The council shall appoint, without regard to chapters 76 and 89, an executive director who shall serve at the pleasure of the council and whose duties shall be set by the council. The salary of the executive director shall be set by the council; provided that the salary shall not exceed the salary of the deputy director of the department of human services. The executive director may also appoint other personnel, without regard to chapters 76 and 89, to work directly for the executive director.

(h) The council may require reports as necessary in the form specified by the council, from state agencies, and program and service providers of the early learning system. All publicly-run programs and services that participate in the early learning system shall establish a system to account for expenditures of non-federal funds that would qualify for matching federal childcare and development funds, or other federal funds, and provide this data to the council to maximize the availability of federal funds. Privately-run programs and services that participate in the early learning system shall be encouraged to make the same data available.

(i) The council shall submit to the legislature no later than twenty days prior to the convening of each regular session, a report regarding:

- (1) Its progress; and
- (2) The status of the early learning system in the state.

**§ -4 Keiki first steps grant program; establishment.** (a) There is established, as part of the early learning system, the keiki first steps grant program, to be developed by the council and administered by the department of human services.

The program shall increase early learning opportunities that meet high standards of quality through the awarding of grants to publicly- or privately-run:

- (1) Center-based programs for three- and four-year-old children; and
- (2) Family child care programs, family-child interaction learning programs, and other early learning programs and services regardless of the age of children served.

(b) Eligibility criteria for grants. The department of human services may award grants for the keiki first steps grant program based on criteria that shall be developed by the council. The criteria shall include the requirement that early learning programs and services meet certain standards of quality, including:

- (1) The implementation of evidence-based and culturally responsive models of service delivery;
- (2) The use of evidence-based curricula and methods;
- (3) Minimum scheduling requirements, as follows:
  - (A) For center-based programs: providing services for a full school day and full school year;
  - (B) For family child care programs: providing services for three hours daily for a full school year;
  - (C) For family-child interaction learning programs operating in classroom-like settings: providing early learning activities at least twice a week for a full school year, and for a minimum of three hours each day; and
  - (D) For home-based instruction programs: providing early learning activities for no fewer than thirty weeks within a school year;
- (4) Staff-to-child ratios and group size that meet or exceed nationally recommended standards;
- (5) The employment of teachers and administrators who meet the qualifications required by the council;
- (6) The incorporation of preschool content standards or other early learning guidelines;
- (7) The implementation of health and developmental screenings for children;
- (8) Opportunities for parent or family engagement and parent education and support; and
- (9) Activities for monitoring and data collection to evaluate early learning programs and services and inform best practices.

(c) Training; technical assistance; monitoring. The department of human services may offer technical support to, and shall be responsible for monitoring to ensure the accountability of programs and services within the keiki first steps grant program, according to the standards developed by the council.

**§ -5 Keiki first steps trust fund.** There is established within the state treasury the keiki first steps trust fund, to be administered by the early learning council, into which shall be deposited all moneys received by the council in the form of:

- (1) Fees;
- (2) Grants;
- (3) Donations;
- (4) Appropriations made by the legislature to the fund; and
- (5) Revenues regardless of their source,

and earnings on moneys in the fund. Moneys in the fund shall be used for the early learning system. Expenditures from the fund may be made by the council without appropriation or allotment.”

PART III

SECTION 3. Section 302A-409, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 302A-410, Hawaii Revised Statutes, is repealed.

PART IV  
EARLY LEARNING FACILITIES

SECTION 5. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§346- Early childhood education facilities; pre-plus.** (a) There is established the pre-plus program within the department to expand access to affordable and high-quality early childhood education for three- to four-year-old children from low-income families, by allowing preschool programs to be established on public school campuses through public-private partnerships.

(b) The department and the department of education shall work collaboratively to develop suitable pre-plus classrooms on department of education campuses statewide, including conversion charter school campuses. The department, with the department of education, shall coordinate site selection for additional pre-plus programs at public school sites, with priority given to public school sites that serve at-risk children as defined in section -1, including sites located in areas with limited access to early learning programs and services.”

SECTION 6. Section 302A-1506.5, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§302A-1506.5]]~~ Early [childhood education] learning facilities; identifying sites.** (a) The department of education shall identify unused public school facilities to be used for [use-by] early [childhood education] learning programs[-] and services. Suitable empty classrooms, as determined by the department, shall be inventoried for potential use [in] for early [childhood education] learning programs[-] and services. Priority shall be given to facilities on sites with sufficient space for three or more classrooms to be renovated or constructed.

(b) The department shall assist in the identification of possible construction sites for private providers to build early [childhood education] learning facilities.

(c) The department shall submit an annual report to the legislature and the early learning council no later than twenty days prior to the convening of each regular session on:

- (1) The number of classrooms that would be suitable for programs and services in the early learning system established by chapter ; and
- (2) The cost of renovating these classrooms to meet the standards of programs and services in the early learning system.”

PART V  
MISCELLANEOUS

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect on July 1, 2008.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2008.)

Note

1. Edited pursuant to HRS §23G-16.5.



**COMMITTEE REPORTS ON BILLS ENACTED  
AND PROPOSED CONSTITUTIONAL AMENDMENT**

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SB1891	216	310, 1007	1318-08, 1697-08	25-08
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SB2041	229 <sup>2</sup>	2068, 2628	1221-08, 1654-08	122-08
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SB2146	173	2494, 2578	1155-08, 1632-08	7-08
SB2150	154	2366, 2783	1084-08, 1335-08, 1694-08	154-08

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SB2157	131	2570	1199-08, 1741-08	44-08
SB2159	206	2333, 2612	1265-08, 1526-08	
SB2163	125	2661	1285-08, 1616-08	49-08
SB2169	163	2105	1206-08, 1594-08	
SB2170	144	2338, 2871	1319-08, 1678-08	8-08
SB2212	147	2713	1164-08, 1679-08	38-08
SB2218	180	2417, 2693	1108-08, 1752-08	124-08
SB2245	170	2212, 2735	1253-08, 1673-08	6-08
SB2258	022	2554	1139-08, 1592-08	
SB2262	Sp 5 <sup>4</sup>	2441, 2672	1201-08, 1693-08	125-08 <sup>13</sup>
SB2263	Sp 6 <sup>4</sup>	2266, 2738	1158-08, 1680-08	
SB2292	004	2104	1127-08	
SB2293	123	2701	1233-08, 1666-08	108-08
SB2314	227 <sup>2</sup>	2488, 2613	1072-08, 1633-08	158-08
SB2345	Sp 7 <sup>4</sup>	2565	1216-08, 1626-08	24-08
SB2365	226 <sup>2</sup>	2102	1706-08	119-08
SB2373	184	2373, 2669	1100-08, 1596-08	30-08
SB2395	008	2292, 2870	1350-08	
SB2396	100	2331, 2880	1133-08, 1337-08, 1742-08	37-08
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SB2400	101	2568	1701-08	1-08
SB2401	028	2106	1578-08	
SB2402	019	2107	1474-08	
SB2423	140	2430, 2749	1089-08, 1225-08, 1775-08	174-08
SB2425	017	2557	1522-08	
SB2433	126	2160, 2808	1187-08, 1665-08	
SB2449	222 <sup>2</sup>	2265, 2572	1229-08, 1670-08	28-08
SB2454	138	2108	1192-08	3-08
SB2456	133	2199, 2609	1587-08	27-08
SB2459	212	2464, 2725	1583-08	160-08
SB2464	072	2650	1170-08, 1478-08	4-08
SB2482	162	2112, 2845	1088-08, 1961-08	
SB2499	071	2648	1227-08, 1593-08	34-08 <sup>14</sup>
SB2542	Sp 8 <sup>4</sup>	2329, 2596	1095-08, 1743-08	159-08
SB2569	048	2653	1188-08, 1754-08	
SB2584	167	2448, 2726	1151-08, 1479-08	
SB2646	233 <sup>2</sup>	2449, 2789	1323-08, 1759-08	177-08
SB2652	187	2142, 2588	1286-08, 1652-08	110-08
SB2668	Sp 9 <sup>4</sup>	2264, 2756	1112-08, 1634-08	111-08
SB2730	199	2146, 2869	1190-08, 1602-08	16-08
SB2768	115	2120, 2820	1197-08, 1685-08	114-08
SB2779	061 <sup>1</sup>	2293, 2676	1302-08, 1662-08	
SB2782	053	2230, 2607	1113-08, 1671-08	
SB2784	095	2663	1588-08	2-08
SB2785	069	2555	1169-08, 1748-08	32-08
SB2803	Sp 10 <sup>4</sup>	2388, 2679	1193-08, 1750-08	151-08
SB2808	110	2519, 2866	1699-08	
SB2816	057 <sup>2</sup>	2027, 2531, 2886	1214-08, 1642-08	
SB2825	203	2303	1208-08, 1605-08	46-08
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SB2830	220, Sp 11 <sup>15</sup>	2118, 2790	1125-08, 1348-08, 1744-08	155-08
SB2833	225 <sup>2</sup>	2455, 2746	1705-08	35-08
SB2838	202	2477, 2598	1716-08	13-08
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SB2843	Sp 13 <sup>4</sup>	2410, 2826	1120-08, 1329-08, 1645-08	164-08
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SB2878	Sp 14 <sup>4</sup>	2250, 2851	1289-08, 1770-08	152-08
SB2879	182	2207, 2753	1707-08	103-08
SB2895	111	2240, 2879	1589-08	20-08
SB2898	062 <sup>11</sup>	2705	1580-08	
SB2900	056	2387, 2617	1291-08, 1681-08	
SB2915	211 <sup>16</sup>	2385, 2842	1709-08	175-08
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SB2961	067	2439, 2782	1220-08, 1636-08	109-08
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SB3004	041	2399, 2784	1203-08, 1771-08	
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SB3019	142	2641	1342-08, 1638-08	
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SB3027	005	2279, 2591	1131-08, 1476-08	
SB3030	238 <sup>2</sup>	2235, 2585	1079-08, 1257-08, 1646-08	5-08
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SB3166	132	2654	1317-08, 1477-08	12-08
SB3171	174	2437, 2787	1264-08, 1764-08	162-08
SB3174	121	2137, 2861	1162-08, 1647-08	167-08
SB3185	052	2277, 2771	1161-08, 1661-08	
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SB3200	045 <sup>2</sup>	2169, 2618	1591-08	
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SB3240	050	2302	1255-08, 1674-08	
SB3255	224 <sup>2</sup>	2473, 2831	1092-08, 1657-08	156-08

## PROPOSED CONSTITUTIONAL AMENDMENT

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
SB0966		655	1457, 1778-08	

### Notes

1. Vetoed and overridden on May 1, 2008.
2. Became law without the Governor's signature.
3. See also Floor Amendment 6.
4. Vetoed and overridden on July 8, 2008.
5. See also Senate Floor Amendment 13 and House Floor Amendment 4.
6. Item vetoed on July 3, 2008.
7. See also Senate Floor Amendment 11 and House Floor Amendment 5.

8. See also Floor Amendment 9.
9. Item vetoed on April 21, 2008.
10. See also Floor Amendment 3.
11. Vetoed on April 22, 2008 and overridden on May 1, 2008.
12. Item vetoed on July 7, 2008.
13. See also Senate Floor Amendment 14 and House Floor Amendment 9.
14. See also Senate Floor Amendment 10 and House Floor Amendment 7.
15. Item vetoed on July 7, 2008 and overridden on July 8, 2008.
16. Item vetoed on July 2, 2008.

# TABLES SHOWING EFFECT OF ACTS

## Twenty-Fourth State Legislature 2007 Second Special and 2008 Regular and Special Sessions

Key: Am = Amended \_\_\_\_\_ = Section number  
 N = New to be assigned in  
 R = Repealed HRS Supplement  
 Sp = Special Session

### A. SECTIONS OF HAWAII REVISED STATUTES (HRS) AFFECTED

HRS Section No.	Effect	Affected By Act No.	HRS Section No.	Effect	Affected By Act No.
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5-_____	N	72	88-286	Am	41
5-15.5	Am	71	88-301	Am	47
6E-_____	N	161	88-321, 322	Am	41
6E-8, 10	Am	228	88E-9	Am	92
6E-35	Am	126	88F-7	Am	92
6F-3	Am	27	89-2, 3	Am	Sp 5
8-_____	N	6	89-6	Am	16
8-_____	N	15			Sp 5
8-_____	N	68	89-9	Am	Sp 5
10-27	Am	16	89C-4	Am	Sp 6
11-_____	N	244	92-_____ (3 secs, pt _)	N	153
11-191	Am	11	92-3.1	Am	20
		244	103-8.5	Am	226
		16	103D-110	Am	194
		244	103D-206	Am	203
11-193, 195, 205.6, 206, 207.5, 212, 213, 216, 217.5, 228	Am	244	104-25	Am	146
15-4, 11	Am	Sp 4	104-32	Am	61
23-_____	N	36	<b>Volume 3</b>		
23-4	Am	36	128D-2	Am	208
26-9	Am	9	128E-6	Am	87
		28	132-3	Am	18
26-10	Am	202	132-16	Am	218
26-11	Am	Sp 9	132D-2, 5, 10, 12	Am	38
26-35	Am	60	138-2	Am	22
26H-4	Am	206	141-1	Am	233
28-8.3	Am	16	141-2, 5	Am	236
		45	142-3.5	Am	109
36-27	Am	226	C 147, pt I (heading)	Am	167
36-30	Am	226	147-1	Am	167
40-1	Am	37	C 147, pt II (heading)	Am	167
			147-21, 51	Am	167
			150A-_____ (7 secs, pt _)	N	236
			150A-2	Am	Sp 3
			150A-4.5	Am	236
			150A-5.3	Am	16
					Sp 3
			150A-6.1	Am	40
46-_____	N	56	150A-14	Am	101
46-_____	N	228	155-_____	N	233
76-77	Am	213	155-1, 8, 9	Am	209
C 87D	Am	Sp 5	157-1, 34	Am	46
88-_____	N	41	163D-_____ (3 secs)	N	234
88-_____	N	47	163D-7, 9, 15.6	Am	234
88-_____	N	156	171-_____	N	216
88-6	Am	41	171-3	Am	233
88-21	Am	41	171-6	Am	215
		47	171-59	Am	200
		47	171-95	Am	90
88-42, 43	Am	47	173A-4, 5, 9	Am	139
88-45.5	Am	41			
88-54.5, 59	Am	47			
88-59.6	R	47			
88-61, 73	Am	47			
88-83.5, 141	Am	41			







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453-6	Am	5	482E-1, 3	Am	19
453-7	Am	9	483-1	Am	19
453-7.5	Am	5	484-1, 2	Am	19
		9	484-3	Am	14
453-8, 8.1, 8.2, 8.7, 10, 14	Am	5			19
to 16					28
453-31	Am	5	484-5	Am	19
		9	485A-202	Am	28
453-32, 32.51	Am	9	486-77, 79 (heading), 134	Am	19
453-32.6	Am	5	486B-1	Am	19
		9	486H-1, 4, 10.4 to 11	Am	19
453-33	Am	9	486K-1, 2 (heading), 4, 5, 6	Am	19
456- (4 secs)	N	175	487-13	Am	19
456-7 to 9.5, 15	Am	175	487J-	N	Sp 10
457-7	Am	23	C 487J	Am	Sp 10
457-8.6	Am	9	487J-1	Am	Sp 10
458-1, 14	Am	63	487J-2	Am	19
C 460	R	5	487N- (3 secs)	N	Sp 10
460-1, 1.35, 3, 21	Am	9	487N-1	Am	19
461-	N	212			Sp 10
461-1	Am	9	487N-2	Am	19
		212	487R-1, 2	Am	19
461-14	Am	212	488-1, 2, 5, 6	Am	19
463E-1 to 3, 6, 12	Am	9	489D- (3 secs)	N	195
467-1, 30	Am	28	489D-4	Am	19
467B- (4 secs)	N	174			195
467B-1, 2.5, 5.5, 8, 9, 9.7,	Am	174	489D-5, 9 to 12, 14, 15,	Am	195
12			17, 19, 22, 28		
			489E-3	Am	19
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476-1, 8	Am	19	501-20, 105, 106	Am	28
477E-2, 5	Am	19	501-151	Am	86
480-14, 20, 22 to 23.1	Am	19	501-241	Am	28
480D-2	Am	19	502-33	Am	86
480F-6	Am	19	502C-1	Am	28
481B-1.6, 4, 5.5,			504-1	Am	86
6 (heading),	Am	19	508D-1	Am	191
11 (heading), 13			508D-3	Am	28
481C-1	Am	19	508D-15	Am	191
481D-3, 5 (heading)	Am	19	514A-97	Am	76
481G-6	Am	19	514A-121.5	Am	205
481H-8 (heading)	Am	19	514B-121	Am	13
481I-2	Am	19	514B-149	Am	76
481J-2, 6, 7	Am	19	514B-161	Am	205
481K-3	Am	19	514C-1, 2, 5 to 6.5, 22	Am	28
481L-4	Am	19	514E-	N	181
481M-4, 7, 10, 12 to 15, 17	Am	19	514E-1, 29	Am	28
481P-2 (heading), 3, 5, 6	Am	19	516D-1, 11	Am	28
481R-4, 9	Am	19	521-3, 38, 52, 71	Am	28
482- (4 secs, pt )	N	108	523A-1 to 41, pt I	R	55
C 482, pt I (heading)	Am	108	523A-63, 65	Am	55
482-1	Am	108	560:2-706	Am	39
C 482, pt II (heading)	Am	108	560:3-708	Am	39
482-3	Am	108	560:5-305, 307, 311, 406,	Am	39
482-3.5	R	108	407, 409		
482-4	Am	108	571-14	Am	154
482-5 (heading)	Am	19	571-46	Am	114
482-5	R	108			149
482-8, 8.5	Am	108	571-46.1	Am	114
C 482, pt III (heading)	N	108	571-81	Am	157
482-21	Am	108	571-87	Am	201
482-30	R	108	576D-6, 11	Am	178
482-31	Am	108	576E-6, 7	Am	178
482-35, 37	R	108	577-28	Am	114
482B-1	Am	19			
482D-1	Am	19			

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584-17	Am	157	706-606.5	Am	80
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587-1, 2, 21, 24, 25, 53	Am	199	707-700	Am	147
			707-711	Am	100
			707-720, 721	Am	147
			707-756	Am	80
			707-764 to 767	Am	147
			708- _____	N	53
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			710- _____ (2 secs)	N	175
			710-1077	Am	157
			711- _____	N	128
			711- _____	N	133
			711-1100, 1108.5	Am	111
			711-1109.1, 1109.2, 1110.5	Am	128
			712- _____	N	192
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			803- _____	N	95
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			804-7.1	Am	171
			846-2.7	Am	136
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			846E-1 to 4, 9, 10	Am	80
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Laws 1996			Act 185	Am	121
Act 304	Am	121	Laws 2005		
Laws 1997			Act 22	Am	16
Act 328	Am	158	Act 124	Am	101
Laws 1998			Act 178	Am	158
Act 116	Am	158			162
Laws 1999			Act 245	Am	16
Act 91	Am	158			Sp 5
Laws 2000			Laws 2006		
Act 281	Am	158	Act 96	Am	158
Laws 2001			Act 118	Am	94
Act 259	Am	158	Act 137	Am	Sp 10
Laws 2002			Act 160	Am	158
Act 177	Am	158			162
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Act 82	Am	144	Act 285	Am	220
Act 198	Am	173			Sp 11
Act 200	Am	158	Act 286	Am	156
Laws 2004			Laws 2007		
Act 41	Am	158	Act 36	Am	71
			Act 85	Am	16
			Act 89	Am	94

<b>SLH Section No.</b>	<b>Effect</b>	<b>Affected By Act No.</b>
Act 152	Am	144
Act 169	Am	102
Act 183	Am	Sp 10
Act 197	Am	16
Act 204	Am	220
		Sp 11
Act 213	Am	158
Act 230	Am	48
Act 231	Am	121
Act 236	Am	239
Act 262	Am	16
Act 264	Am	16
Act 294	Am	16
		Sp 5

**C. SECTIONS OF THE HAWAIIAN  
HOMES COMMISSION ACT 1920  
(HHCA) AFFECTED**

<b>HHCA Section No.</b>	<b>Effect</b>	<b>Affected By Act No.</b>
§215	Am	85

**D. SECTIONS OF THE STATE  
CONSTITUTION AFFECTED**

<b>Section No.</b>	<b>Proposed Effect</b>	<b>Bill No.</b>
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